(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAY 27 2014 OFFICE: IMMIGRANT INVESTOR PROGRAM FILE: [redacted]

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Chief, Immigrant Investor Program Office (IPO), denied the preference visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment creation alien pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5). The petition is based on an investment in LP, a new commercial enterprise (NCE). According to page 3 of the September 2012 business plan, which the petitioner initially filed in support of the petition, the NCE is a limited partnership formed "for the purpose of funding the ground-up construction, development and management of an assisted living facility" in Texas. The business plan further provides that the NCE has a general partner, LLC, and three limited partners, each seeking classification as an employment creation alien pursuant to section 203(b)(5) of the Act. The petitioner is one of the NCE's three limited partners. The petitioner indicated on part 2 of the petition that the NCE is located in a targeted employment area (TEA). Thus, the required amount of equity investment is $500,000.

According to a September 6, 2013 letter from Manager of LLC, which the petitioner filed on appeal, LLC is the general partner in 13 limited partnerships, LP through LP. Each of the 13 limited partnerships, including the NCE, plans to build, develop and operate an assisted living facility in Texas. Mr. attached a document entitled "Exhibit A" to his letter. This attachment, as well as the September 2012 business plan, indicates that each limited partnership requires a $3.5 million investment, with $1.5 million to $1 million coming from limited partners, like the petitioner, and the remaining $2 million to $2.5 million coming from LLC through mortgages and a line of credit.

The chief determined that the petitioner did not demonstrate that he had invested or was actively in the process of making an at-risk investment of the required $500,000. For the reasons discussed below, the petitioner has not overcome the chief's sole ground for denial. In addition, the petitioner has not documented the lawful source of his required amount of capital. Accordingly, the petitioner's appeal will be dismissed.

I. THE LAW

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).

II. PROCEDURAL AND FACTUAL HISTORY

The petitioner filed the petition on October 3, 2012, supported by the following types of evidence: (1) the NCE's corporate documents, including documents showing the petitioner's claimed investment in the NCE; (2) documents from the United States Census Bureau relating to , Texas; (3) the NCE's September 2012 business plan; (4) LLC's corporate documents; and (5) documents relating to the source of the petitioner's claimed investment in the NCE.

On March 30, 2013, the Director, California Service Center, issued a Request for Evidence (RFE). Specifically, the director requested evidence: (1) that the NCE was located in a TEA; (2) that the petitioner's requisite capital had been placed at risk in the NCE in light of LLC's obligation to secure $2 million to invest in the NCE and the NCE's obligation to redeem the petitioner's interest in the NCE; and (3) that the NCE would meet the job creation requirements.

The petitioner filed a response to the RFE on May 7, 2013, supported by the following types of evidence: (1) documents relating to the NCE's business operation; (2) documents relating to Texas; (3) an April 8, 2013 senior housing market analysis; (4) documents relating to LLC's potential sources of funding for investment; (5) an undated letter from Mr. (6) an April 10, 2013 Agreement of Waiver; (7) an April 25, 2013 letter from LLC; and (8) documents relating to and photographs of in Alabama.

On August 22, 2013, the chief denied the petition. The chief concluded that the petitioner had not established that his funds were placed at risk because: (1) he had not shown that in addition to the three limited partners' $1.5 million investment, LLC could raise the remaining $2 million needed for the NCE; and (2) the NCE's Limited Partnership Agreement included a mandatory redemption clause.

The petitioner filed the instant appeal, supported by the following types of evidence: (1) a September 6, 2013 letter from Mr. (2) letters from Senior Vice President/Manager of (3) loan documents; (4) Agreements of Wavier; and (5) an undated document entitled "No. 1 Amendment to the Limited Partnership Agreement." On appeal, the petitioner asserts LLC has secured the needed funds for the NCE and that the NCE has deleted the mandatory redemption clause from the Limited Partnership Agreement.

On October 2, 2013, the petitioner submitted a September 30, 2013 letter, stating that some of the documents filed on appeal contained incorrect information. The petitioner provided additional supporting documents, including a September 17, 2013 commitment letter from Mr. and a document entitled "Exhibit A," relating to funds needed for 13 limited partnerships, including the NCE.

On April 8, 2014, the AAO issued a notice of derogatory information. Specifically, the AAO advised the petitioner that according to the website of the Texas Comptroller of Public Accounts, the Comptroller had forfeited the rights of the NCE and its general partner, LLC, to transact business in Texas. *See* https: accessed on March 25 and 31, 2014 and incorporated into the record of proceeding. On May 7, 2014, the petitioner submitted a May 5, 2014 letter, stating that the "situation occurred due to an error made by an outside firm filling out the entity tax return (the incorrect box was checked)." The petitioner also submitted evidence that as of April 16, 2014, Texas has changed the status of both entities from that of "Forfeited" to "Active." Thus, the petitioner has resolved that concern.

III. ISSUES PRESENTED ON APPEAL

A. Capital Investment

The regulation at 8 C.F.R. § 204.6(e) defines capital and investment. The regulation at 8 C.F.R. § 204.6(j)(2) explains that a petitioner must document that he or she 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. The regulation then lists the types of evidence the petitioner may submit to meet this requirement.

Even if a petitioner transfers the requisite amount of money, he must establish that he placed his own capital at risk. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1042 (E.D. Calif. 2001) (citing *Matter of Ho*, 22 I&N Dec. 206, 209 (Assoc. Comm'r 1998)). Before it can be said that capital made available to a commercial enterprise has been placed at risk, a petitioner must present some evidence of the actual undertaking of business activity; otherwise, no assurance exists that the funds will in fact be used to carry out the business of the commercial enterprise. *Matter of Ho*, 22 I&N Dec. at 210.

The petitioner has not shown that he has placed the required amount of capital at risk for the purpose of generating a return on the capital. While not determinative, page 31 of the Confidential Private Offering Memorandum explicitly states that "[a]n investment in the partnership is purely for immigration benefits and not for commercial return on investment." For the reasons discussed below, the documents in the record do not establish that the petitioner has placed the claimed capital investment at risk to generate a return.

1. Additional Investment Funds

The September 2012 business plan provides that the NCE requires a total investment of $3.5 million, which will come from three limited partners, including the petitioner, each investing $500,000, and LLC investing $2 million. According to pages 8 and 9 of the business plan, the initial phases of the project include architectural and engineering fees, costing $87,000, and construction of the

assisted living facility, costing $1.87 million. While the petitioner has submitted evidence showing that he transferred $500,079 to LLC on August 28, 2012, and that LLC transferred $500,000 to the NCE on an unspecified date, the petitioner has not submitted documents showing that the other two limited partners, and have each invested $500,000.

Moreover, the petitioner has not shown that, at the time of filing, LLC had raised or secured a commitment for $2 million to invest in the NCE. To show LLC has secured the necessary funds, on appeal, the petitioner files four letters from Mr. to show that has agreed to lend money and extend a line of credit to LLC. These letters do not establish that LLC had secured the necessary funds to invest in the NCE when the petitioner filed his petition on October 3, 2012. First, it is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In other words, the petitioner cannot secure a priority date based on the anticipation of future events. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that the United States Citizenship and Immigration Services (USCIS) cannot "consider facts that come into being only subsequent to the filing of a petition.") Mr. 's letters postdate the filing of the petition. As such, the petitioner has not shown that at the time of filing, on October 3, 2012, LLC had secured the necessary funds or a commitment for the funds to invest in the NCE. Without the additional funding from LLC, the petitioner's claimed investment of $500,000 was not at risk, as the additional funding was needed for the project before the NCE could undertake any meaningful business activity. *See Matter of Ho*, 22 I&N Dec. at 210.

Second, Mr. 's letters include inconsistent information. The June 19, 2013 letter provides that the costs to construct and operate an assisted living facility are $3.25 million, while the business plan notes that the costs are $3.5 million. In addition, Mr. 's letters provide inconsistent information relating to the guarantors of the loan. Specifically, the June 19, 2013 letter provides that the guarantors of the loan include ' not including LP." According to the September 16, 2013 and September 17, 2013 letters, however, the guarantors do not include LP, LP or LP, but do include LP. The petitioner has provided inconsistent evidence and "it is incumbent upon [him] to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has provided no competent objective evidence to explain or reconcile the inconsistent evidence.

Third, the June 19, 2013 letter provides that "this commitment shall remain effective until 7/31/13" and that the "Bank shall have no further obligation hereunder after that date." The petitioner, however, has not submitted evidence showing an extension of the July 31, 2013 effective date. While the September 17, 2013 letter purports to extend the term of the commitment through September 5, 2014, the signatures all appear on separate pages and are exact copies of the signature pages supporting the September 16, 2013 letter. Thus, the record does not establish which letter the signatories executed.

2. Redemption Clause

On appeal, the petitioner does not challenge the chief's finding that the presence of a mandatory redemption clause in section 8.5 of the Limited Partnership Agreement precludes a finding that the petitioner's funds are at risk. *See* 8 C.F.R. § 204.6(e) (excluding a contribution of capital in exchange for an obligation from the definition of "invest"); 8 C.F.R. § 204.6(j)(2)(iv) (providing that evidence of stock "may not include terms requiring the new commercial enterprise to redeem it at the holder's request.") For the petitioner's money to be truly at risk, the petitioner cannot enter into a partnership knowing that he has a willing buyer in a certain number of years, nor can he be assured that he will receive a certain price. Otherwise, the arrangement is nothing more than a loan, albeit an unsecured one. *Matter of Izummi*, 22 I&N Dec. at 186; *see also R.L. Investment Ltd. v. INS,* 86 F. Supp. 26 1014 (D. Haw. 2000) *aff'd* 273 F.3d 874 (9th Cir. 2001). Instead, the petitioner asserts that the mandatory redemption clause is no longer in place because all three limited partners executed an Agreement of Waiver in April 2013, waiving the enforcement of section 8.5(b), and because the NCE deleted both section 8.5(b) and 8.5(c) in an undated document entitled "No. 1 Amendment to the Limited Partnership Agreement."

The regulation at 8 C.F.R. § 204.6(j)(2) requires specific initial evidence documenting that the petitioner has already committed the capital and placed that capital at risk. Specifically, that regulation provides that 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." The regulation further states that 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."

It is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); 72 Fed. Reg. 19100 (Apr. 17, 2007) (adopting 8 C.F.R. § 103.2(b)(1), originally proposed at 69 Fed. Reg. 69549 (Nov. 30, 2004); 59 Fed. Reg. 1455, 1458 (Jan. 11, 1994) (explaining in the commentary to 8 C.F.R. § 103.2(b)(12) that supplemental evidence must establish eligibility for the benefit when the petition was filed); *Matter of Katigbak*, 14 I&N Dec. at 49 (holding that a beneficiary may not demonstrate eligibility as a member of the professions based on coursework that postdates the filing of the petition). Ultimately, the petitioner cannot secure a priority date based on future events. *Matter of Izummi*, 22 I&N Dec. at 175-76 (adopting the reasoning in *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.") *See also EB-5 Adjudications Policy*, PM-602-0083, p. 24 (May 30, 2013) (citing *Matter of Izummi*, 22 I&N Dec. at 176 and 8 C.F.R. § 103.2(b)(1) for the proposition that a petitioner cannot establish eligibility under a new set of facts during the pendency of the Form I-526 petition); *Spencer Enterprises, Inc. v. United States,* 229 F.Supp. 1025, 1038, n.4 (E.D. Calif. 2001) *aff'd* 345 F.3d 583 (9th Cir. 2003) (upholding a finding that a construction management agreement with substantive changes "could not be accepted for the first time on appellate review"); *cf Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978) (requiring eligibility at the time of filing even for nonimmigrant petitions that do not involve priority

dates); *Matter of Great Wall,* 16 I&N Dec. 142, 144-145 (Act. Reg'l Comm'r 1977) (holding that consideration of whether the petitioner has the ability to pay the proffered wage should necessarily focus on the circumstances as of the date of filing, later codified at 8 C.F.R. § 204.5(g)(2)); *Matter of Wing's Tea House*, 16 I&N Dec. at 160 (holding that a petitioner cannot rely on experience the beneficiary gained after the priority date for purposes of establish eligibility).

In this case, the petitioner filed the petition on October 3, 2012. At the time of filing, the petitioner submitted an August 28, 2012 Limited Partnership Agreement, which he signed on August 21, 2012, seven days before the date on page 1. The agreement included an "Exit Option for Limited Partner" section on page 27. Section 8.5(b)(2) provided that "[f]ollowing the Fifth Anniversary date of each limited partner, General Partner LLC] is obligated to cause the Partnership to redeem the Partnership Interest of such Limited Partner at any time, and from time to time." Section 8.5(c)(1) similarly provided, "[in] the event that Partnership generates and accumulates adequate fund[s] through its operations, the General Partner shall redeem the Partnership Interest of each Redeeming Limited Partner and shall . . . cause the Partnership to pay to such Redeeming Limited Partner an amount equal to such Redeeming Limited Partner's unrecovered Capital Contribution." As such, the petitioner has not shown that at the time of filing, his $500,000 claimed capital investment constituted evidence of funds that were at risk, under the regulation at 8 C.F.R. §204.6(j)(2).

Moreover, the petitioner has not shown that *Matter of Izummi,* 22 I&N Dec. at 175-76, or any other legal authority, permits the post-filing waiver of the otherwise mandatory redemption clause. On appeal, the petitioner asserts that "No. 1 Amendment to the Limited Partnership Agreement" seeks to rectify inconsistencies between the Limited Partnership Agreement and the Confidential Private Offering Memorandum. In *Matter of Izummi*, the AAO "recognized," without discussion, amendments that "cause[d] the partnership agreement to conform to the other agreements that th[e] petitioner had originally executed and submitted with his Form I-526." In this case, however, the petitioner has not shown that the August 2012 Limited Partnership Agreement and the September 2012 Confidential Private Offering Memorandum are inconsistent with respect to the NCE's obligation to redeem the petitioner's claimed capital investment. Similar to clause 8.5 in the Limited Partnership Agreement, page 26 of the Confidential Private Offering Memorandum includes an "Exit Strategy" section that provides: "[t]he Partnership intends to redeem the investor's units from proceeds generated through its operation of the Project, or refinancing the Project or possibly a sale of the Project." The Confidential Private Offering Memorandum further provides that "[t]he Partnership should have sufficient funds to redeem the Limited Partners at the time of the Project's conclusion . . . . If, however, the Partnership has inadequate funds to redeem the Limited Partners, then the Partnership will evaluate its options as that point, including sale, mortgage or otherwise disposal of the Project's assets, including the Project property." While the Confidential Private Offering Memorandum contemplates that the NCE might not have the funds to fulfill its obligation, the petitioner's risk was only that of a creditor, not an equity investor. *Matter of Izummi,* 22 I&N Dec. at 185.

Furthermore, on appeal, the petitioner files a document entitled "Acknowledgement" that purports to verify the petitioner's receipt of a copy of the Confidential Private Offering Memorandum. The petitioner signed and dated the document on August 21, 2012. The Confidential Private Offering Memorandum the petitioner initially filed in support of the petition, however, is dated September 2012.

The petitioner has provided inconsistent evidence relating to the Confidential Private Offering Memorandum he claims to have received or is operative in the business arrangement. The petitioner has provided inconsistent evidence and "it is incumbent upon [him] to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. at 591-92. The petitioner has provided no such evidence to explain or reconcile the inconsistent evidence.

Ultimately, the petitioner has not documented that he had fully committed his funds and placed them at risk as of the date of filing. Rather, subsequent to that date, he waived the redemption clause at 8.5(b) in an attempt to conform to USCIS requirements set forth in the regulatory definition of invest (as of 1991) and a 1998 precedent decision after the director, in the RFE, identified the redemption clause as a deficiency. The April 2013 waivers are not probative of eligibility as of the date of filing. *Matter of Izummi*, 22 I&N Dec. at 175, 183, n. 15 (precluding a material change in a redemption provision (a buy option exercisable after seven years instead of three years) in an effort to make an apparently deficient petition conform to USCIS requirements). Moreover, the April 2013 waivers only waive the provision at 8.5(b). Section 8.5(c) also obligates the NCE to redeem the limited partnership interests. On appeal, the petitioner submitted an undated amendment to the Limited Partnership Agreement eliminating both 8.5(b) and (c). Only the general partner, however, signed the amendment.

Accordingly, the petitioner has not demonstrated that, as of the date of filing, he had placed his funds at risk. Even as of the date of appeal, the petitioner has not signed any agreement waiving clause 8.5(c).

3. Business Activities

The petitioner has not presented sufficient evidence showing that the NCE has undertaken actual business activities such that the petitioner's $500,000 claimed capital investment may be considered at risk. *Matter of Ho*, 22 I&N Dec. at 210, states:

> Before it can be said that capital made available to a commercial enterprise has been placed at risk, a petitioner must present some evidence of the actual undertaking of business activity; otherwise, no assurance exists that the funds will in fact be used to carry out the business of the commercial enterprise. This petitioner's *de minimis* action of signing a lease agreement, without more, is not enough.

That case concludes: "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.* Review of the record reveals that the petitioner did not initially support the petition with any documentation of the NCE's business activity.

In response to the director's RFE, the petitioner submitted documents, all dated in either April or May 2013, relating to: (1) LLC's assignment of a commercial contract of land purchase to the NCE for $10; (2) the appointment of the NCE's president and vice-president; (3) the NCE's acceptance of LLP's April 25, 2013 construction, design and engineering

proposals; and (4) a $995 payment for an April 8, 2013 market analysis report on the senior housing market. The evidence is insufficient to show that the petitioner's claimed capital investment had been placed at risk as of the date of filing, October 3, 2012. As noted, a petitioner must establish eligibility at the time of filing the petition; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49; *see also Matter of Izummi*, 22 I&N Dec. at 175-76; *Spencer Enterprises, Inc.*, 229 F.Supp. at 1038, n.4. At the time of filing, the petitioner had not established any business activity such that his claimed investment funds could be considered at risk. *See Matter of Ho*, 22 I&N Dec. at 210. In fact, although page 7 of the Confidential Private Offering Memorandum, which the petitioner submitted initially, provides that [redacted] LLC, was to develop and manage the construction phase, the petitioner has not since submitted any evidence showing [redacted] LLC's involvement with the NCE. Similarly, according to page 7 of the Confidential Private Offering Memorandum and page 4 of the September 2012 business plan, the NCE was to develop, build and operate a 22-unit assisted living facility. Page 2 of the April 8, 2013 Senior Housing Market Analysis, however, discusses the development of a 30-bed assisted living facility. The changes in contractors and facility size demonstrate the NCE and the petitioner's minimal commitment to the project, as described in the initial filing, at the time of filing. *See generally Spencer Enterprises, Inc.*, 229 F.Supp. at 1042.

Even if the petitioner had shown the NCE's obligation to pay for the accepted services, the petitioner has not shown that there has been performance under the proposals. As such, at most, these documents indicate the NCE's prospective investment arrangements entailing no present commitment, which are not sufficient to show that the petitioner's $500,000 claimed capital investment had been placed at risk. *See* 8 C.F.R. § 204.6(j)(2). 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. *Matter of Ho,* 22 I&N Dec. at 210.

In light of the above, the petitioner has not demonstrated that he has placed the required amount of capital at risk in the NCE for purpose of generating a return on the capital placed at risk. *See* 8 C.F.R. § 204.6(j)(2).

4. Administrative Fee

The petitioner has not shown that the $500,079 he transferred to [redacted] LLC constitutes his investment of at least $500,000 in the NCE. Specifically, according to page 8 of the Confidential Private Offering Memorandum, "the Partnership will receive from each subscribing investor an administrative fee of $39,000 (the "Administrative Fee") . . . . The Administrative Fee shall be paid directly to the Partnership upon subscription by each individual investor." The petitioner has not provided evidence, such as bank documents, showing that he has paid the NCE $39,000, in addition to the $500,000 claimed capital investment. Without evidence of the petitioner's payment of $39,000 beyond the $500,000 payment, the petitioner has not shown that he has invested at least $500,000, the minimum required amount of equity investment, in the NCE.

In light of the above, the petitioner has not demonstrated that he has placed the required amount of capital at risk in the NCE for purpose of generating a return on the capital placed at risk. *See* 8 C.F.R. § 204.6(j)(2).

B. Source of Funds

As an additional issue, the petitioner has not shown the lawful source of the funds invested in the NCE. An application or petition that does not comply with the technical requirements of the law may be denied by the AAO even if the chief does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The regulation at 8 C.F.R. § 204.6(j)(3) lists the type of evidence a petitioner must submit, as applicable, including foreign business registration records, business or personal tax returns, or evidence of other sources of capital. 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.*

The petitioner has not submitted sufficient evidence documenting the path of his $500,000 claimed capital investment. Specifically, according to an August 31, 2012 Statement of Capital Exchange and related bank statements, on August 21, 2012, the petitioner wired 3.5 million Renminbi (RMB) to 's account ending in 9911; and on August 28, 2012, Ms. wired $500,000 from her account ending in to the petitioner's account ending in . Ms. 's bank deposit book for her account ending in shows a $500,000 deposit and a $500,000 withdrawal on August 28, 2012. The petitioner has not shown that the August 28, 2012 $500,000 deposit derived from his August 21, 2012 3.5 million RMB wire. Indeed, Ms. 's account ending in shows an August 21, 2012 deposit of 3.5 million RMB with an "EFT" abstract notation, and an August 21, 2012 withdrawal of 3.5 million RMB with a "Payables and Receivable" abstract notation. The petitioner has submitted insufficient evidence showing how the August 21, 2012 3.5 million RMB withdrawal from Ms. 's account ending in resulted in the August 28, 2012 $500,000 deposit in Ms. 's account ending in

In addition, to establish the lawful source of the petitioner's claimed capital investment, the petitioner has submitted foreign language documents and their English translations. The submitted documents do not meet the regulation at 8 C.F.R. § 103.2(b)(3), which provides, "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." The petitioner has not submitted a certificate that meets the regulatory requirements. Specifically, the submitted a document, entitled "Declaration" that does not specify the individual translator who translated the foreign language documents, nor does it certify his or her competency to translate the foreign language documents. Moreover, the blanket declaration refers to "all the translation[s]

contained in" the petitioner's file without listing the actual translations the translator completed. As such, the submitted foreign language documents and their English translation have no evidentiary weight in showing the lawful source of the petitioner's claimed capital investment.

In light of the above, the petitioner has not demonstrated the lawful source of his claimed investment in the NCE. *See* 8 C.F.R. § 204.6(j)(3).

IV. SUMMARY

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.