

DISCUSSION: The preference immigrant visa petition was denied by the Director, California Service Center and 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 petitioner indicated on the petition that it was based on an investment in a business, Shogun Baytown Japanese Steakhouse and Sushi Bar, not located in a targeted employment area for which the required amount of capital invested has been adjusted downward. Thus, the required amount of capital in this case is \$1,000,000. The initial filing contained no evidence or claim of an investment or commitment to invest above \$80,000. The initial filing also contained no evidence establishing that the petitioner, a cook at the new commercial enterprise during an unauthorized period of stay in the United States, had lawfully accumulated sufficient funds to make the required investment. Finally, the record contained no evidence of the existence of the new commercial enterprise as an entity, such as articles of organization.

On April 4, 2011, the director requested the petitioner to submit additional evidence regarding:

1. The establishment of a new commercial enterprise;
2. The required amount of capital being invested in the new commercial enterprise;
3. The lawful source of the invested capital;
4. Job creation at the regulatory required level; and
5. The petitioner's engagement in the management of the new commercial enterprise.

The director stressed that each investor seeking benefits under section 203(b)(5) must invest the requisite amount. In response, the petitioner submitted Internal Revenue Service (IRS) Forms W-2 for [REDACTED] the petitioner's tax returns reflecting minimal adjusted gross income, the 2010 Internal Revenue Service (IRS) Form 1065 for [REDACTED] reflecting end-of-year partner capital accounts of \$177,508 and the petitioner's bank statements. The petitioner did not submit any evidence of the existence of [REDACTED] or that it does business as Shogun Baytown Japanese Steakhouse and Sushi Bar.

The director determined that the petitioner had not documented a qualifying investment of lawfully obtained funds or that he had created or was likely to create the requisite 10 jobs.

On appeal, the petitioner failed to specifically address the reasons stated for the denial and to identify any erroneous conclusion of law or statement of fact on the part of the director. Instead, the petitioner merely stated:

On behalf of [the petitioner], we would like request [sic] to reconsider on his case for the reasons as set forth the [sic] following:

1. Petitioner joined with the business of [REDACTED] Which it over [sic] \$1,000,000 total capital investment. Every year the overall business generated coming out [sic] with a profit (see the attached yearly financial statement).
2. According to the promissory notice agreement, petitioner has paid \$5,000/per month which is annually total of \$40,000. The \$5,000 payment is from the profit share with the [REDACTED]
3. We would like to submit the employment information of the business

Petitioner respectfully requests to reconsider his case. Granting Petitioner request to reconsider does not detriment U.S. Citizenship and Immigration from further review or consideration of Petitioner [sic] case.

Although the petitioner provided additional evidence on appeal, counsel offers no explanation regarding how this additional evidence demonstrates error on the part of the director based upon the record that was before her. On appeal the petitioner submitted a compiled 2010 financial statement based on the representations of management, a self-generated list of employees, and the petitioner's 2010 IRS Form 1065 schedule K-1 showing a capital contribution of only \$44,415.

The purpose of the request for evidence is to elicit further information that clarifies whether the petitioner has established his eligibility for the benefit sought as of the filing date of the petition. See 8 C.F.R. §§ 103.2(b)(8) and (12). The petitioner's failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where the director put the petitioner on notice of a deficiency in the evidence and gave the petitioner an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the director to consider the submitted evidence, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal.

As stated in the regulation at 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the concerned party fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Cf. *Idy v. Holder*, No. 11-1078, 2012 WL 975567 (1st Cir. Mar. 23, 2012) (where an alien fails to raise any legal issue regarding the Board of Immigration Appeals denial of an inadmissibility waiver, the Court of Appeals is deprived of jurisdiction). See also *Desravines v. United States Attorney General*, No. 08-14861, 343 F. App'x 433, 435 (11th Cir. 2009) (finding that issues not briefed on appeal are deemed abandoned); *Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir. 1979) (deeming abandoned an issue raised in the statement of issues but not anywhere else in the brief). In this instance, the petitioner has not identified a basis for the appeal. The petitioner does not contest the director's findings and offers no substantive basis for the filing of the appeal. As the

petitioner failed to provide any specific statement or argument regarding the basis of his appeal, the appeal must be summarily dismissed.

ORDER: The appeal is dismissed.