U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 30 2009

SRC 06 112 51522

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).

Mari Johnson

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 or that he had created or would create the requisite number of full-time permanent jobs.

On appeal, counsel submits a brief. Counsel's sole basis of appeal is procedural. Specifically, on May 17, 2006, the director issued a notice of intent to deny the petition. The petitioner was afforded 30 days in which to respond. On June 13, 2006, counsel requested an additional 30 days to respond. Counsel then filed a response on June 16, 2006. In his response, counsel addressed two of the director's concerns and requested additional time to respond to the director's third concern. On September 25, 2006, the director issued the final notice of denial, which takes into account counsel's June 16, 2006 response. On appeal, counsel notes that the final denial asserts that an extension was granted before the June 16, 2006 response was received. Counsel further asserts that he requested an additional extension on July 26, 2006 "because the applicant's accountant was still working on preparing the documents" requested but does not suggest this request was granted. Counsel finally asserts that a second response was submitted August 27, 2006 addressing the amount of the petitioner's investment. Counsel requests "a reversal" of the denial and "an opportunity to have [the petitioner's] application read in its entirety to make a proper denial."

The record of proceeding contains two previous Forms I-526 filed by the petitioner, SRC-04-187-52231 and SRC-05-105-50277. The petitioner withdrew the first petition after the director issued a notice of intent to deny and filed a second Form I-526. The director issued a new notice of intent to deny the second Form I-526. After requesting additional time to respond, prior counsel (counsel's partner) submitted a substantive response. The director concluded that the response did not overcome the concerns raised in the notice of intent to deny and denied the second Form I-526. In the two prior notices of intent to deny and the previous denial, the director expressed concern that the petitioner had not demonstrated a sufficient qualifying investment. Thus, this issue was not raised for the first time in the May 17, 2006 notice of intent to deny.

While the director does reference an initial grant of additional response time, the record does not contain a copy of any notice granting additional time. Moreover, counsel does not claim to have received a notice granting the second request for an extension and the record contains no evidence that it was granted. Moreover, the record does not contain the July 26, 2006 request for additional time to respond or the August 27, 2006 response, a copy of which is submitted on appeal. Significantly, while the extension was allegedly requested to prepare additional documentation, the August 27, 2006 letter submitted on appeal only references documents that were already part of the record.

The regulation at 8 C.F.R. § 103.2(8)(iv) expressly states: "Additional time to respond to a request for evidence or notice of intent to deny may not be granted." Thus, the director did not have the discretion to grant a request for additional time to respond. As counsel has not demonstrated that the director

erred in failing to consider evidence that was properly before her, we will not remand the matter back to the director for a new decision. Rather, we will consider the August 27, 2006 letter part of counsel's appellate brief. Thus, our decision will be based on the entire record of proceeding, including the August 27, 2006 letter. For the reasons discussed below, we uphold the director's findings.

The 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), which amends portions of the statutory framework of the EB-5 Alien Entrepreneur program, was signed into law on November 2, 2002. Section 11036(a)(1)(B) of this law eliminates the requirement that the alien personally establish the new commercial enterprise. Section 11036(c) provides that the amendment shall apply to aliens having a pending petition. As the petition was filed after November 2, 2002, the petitioner need not demonstrate that he personally established a new commercial enterprise. The issue of whether the petitioner purchased a preexisting business is still relevant, however, as a petitioner must still demonstrate the creation of 10 new jobs.

Section 203(b)(5)(A) of the Act, as amended, 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 been adjusted downward. Thus, the required amount of capital in this case is $1,000,000. [redacted]. was incorporated on August 18, 1981 to operate the [redacted]. The corporation sold the hotel to [redacted] in 1991, with [redacted]. (then known as [redacted]) financing $1,050,000 of the sale. On December 28, 1993, [redacted] foreclosed on the property and resumed control of the motel. [redacted]. is currently transforming the [redacted] into condominiums. The director concluded that the transformation, which began after November 29, 1990, sufficiently reorganized the business such that a new commercial enterprise resulted. *See* 8 C.F.R. § 204.6(e) (definition of "new"); 8 C.F.R. § 204.6(h)(2) (establishment of a new commercial enterprise through reorganization). At issue on appeal is whether the petitioner has demonstrated a qualifying investment and whether the petitioner has demonstrated that the conversion of a hotel to condominiums can generate any new full-time permanent employment.

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.
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> * * *
>
> *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:
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> > (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
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> (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 Part 3 of the petition, the petitioner indicated that his total investment amounted to $2,102,057. The petitioner broke this investment down as $10,604 in cash, $95,300 in assets purchased for the business, $1,375,000 in debt financing and $621,153 as "other." Counsel explains that the petitioner spent $95,300 in repairs and renovations begun in December 1993 and personally guaranteed a "Balloon Promissory Note." Counsel further asserts that the "other" funds set forth on the petition involved the following transfers of cash from the petitioner: $329,490 on April 4, 2005, $20,000 through four credit card transactions on October 13, 2005 and $271,663.23 on November 3, 2005. 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).

In support of the alleged $95,300 in purchased assets, the petitioner submitted a tax asset detail for [redacted]. The detail reflects assets put in service between December 17, 1993 and March 4, 2003. The hotel, however, has been operational since 1981 and the corporation has continually existed since that time. While the hotel has changed ownership twice, the most recent change due to foreclosure and reversion to [redacted], the record does not suggest that the corporation had no cash in 1993 from which to purchase assets and make repairs. Any corporate cash or other reinvestment of proceeds from the operations of the hotel cannot be credited as the petitioner's personal investment. *See generally Kenkhuis v. INS*, 2003 WL 22124059 (N.D. Tex. Mar. 7, 2003); *De Jong v. INS*, 1997 WL 33765206 (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. The record contains no evidence that the petitioner personally purchased $95,300 in assets for the hotel.

In support of the debt financing, the petitioner submitted a letter from [redacted], Senior Vice President of First National Bank addressed to the petitioner[1] advising him that [redacted] has a $500,000 revolving line of credit and that the petitioner personally guarantied the loan. The petitioner also submitted a Commercial Guaranty listing [redacted] as the borrower and [redacted] as the guarantor. The petitioner also signed an August 8, 2005 promise to pay $1,375,000 to the [redacted] and [redacted] due October 7, 2005. The petitioner appears to have signed the note both as president of [redacted]

[1] The letter is addressed to '[redacted]' which appears to be the Anglicization of the petitioner's Italian name.

and individually.[2] The note was secured "by a mortgage of even date." As noted by the director, the record contains no evidence as to the ownership of the assets securing the note.

As evidence of funds transferred to [redacted], the petitioner submitted evidence of an April 4, 2005 $329,566 withdrawal from his account with a handwritten notation that the funds were transferred to [redacted]. and derived from the sale of the petitioner's home in Canada. The petitioner also submitted four October 13, 2005 credit card receipts for four different MasterCard accounts issued by [redacted] reflecting payments of $5,000 each.[3] Finally, the petitioner submitted a statement for [redacted]' account reflecting a November 3, 2005 deposit of $271,663.23 and a deposit slip listing the $271,663.23 deposited check as the petitioner's check representing a "shareholder loan."

As noted by the director, the 2003 Internal Revenue Service (IRS) Form 1120 U.S. Corporation Income Tax Return, Schedule L, shows stock of only $10,000, additional paid-in-capital of only $203,916 and shareholder loans of $461,299. As acknowledged by the director, the petitioner did submit a letter from [redacted]r, the accountant who has been maintaining the books for [redacted], asserting that as of August 31, 2004, the shareholder loans were reclassified as capital contributions. The petitioner, however, has not complied with the director's request for [redacted]' 2004 tax return.

In the August 27, 2006 letter, counsel asserts that the petitioner is "actively in the process of investing" the full $1,000,000 and that his investment of $621,153.23 (representing the transfers in 2005 discussed above) represents the petitioner's "good faith showing of his active investment."

As quoted above, the regulation at 8 C.F.R. § 204.6(j)(2) states that in order to demonstrate that he is actively in the process of investing, the petitioner must demonstrate that he 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. *Id.* The alien must show actual commitment of the required amount of capital. *Id.* The amount invested in 2005 is less than two thirds of the requisite investment amount. While counsel asserts that it is "estimated that there will be at least another $400,000 invested to complete Phase II of the project," the petitioner has not demonstrated that another $400,000 is irrevocably committed to [redacted] For example, the record lacks evidence that the funds have been placed in escrow or that the petitioner has entered into a contract for the development of Phase II that requires him to pay the costs personally rather than from the proceeds of selling previously completed condominiums.

Moreover, the petitioner cannot trace the $329,566 withdrawal from his own account to an account of [redacted]. and has not resolved the issue of shareholder loans. As quoted above, the definition of invest at 8 C.F.R. § 204.6(e) precludes debt arrangements between the alien

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The petitioner signed as [redacted] as president and under his Italian name individually. The signatures, however, are identical.

[3] One of the receipts identifies the payee as [redacted]

and the new commercial enterprise. Despite the affirmations o regarding classification of the petitioner's cash infusions in 2004, in November 2005 the petitioner indicated on the deposit slip that the $271,663.23 infusion was a shareholder loan. As stated above, the petitioner did not comply with the director's specific request for [redacted]' 2004 corporate tax return. The appellate brief is dated November 28, 2006, yet the petitioner did not submit either the corporation's 2004 or 2005 tax returns even though both such returns should be available.

In light of the above, 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:
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> (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
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> (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:

> *Employee* means an individual who provides services or labor for the new commercial enterprise and who receives wages or other remuneration directly from the new commercial enterprise. In the case of the Immigrant Investor Pilot Program, "employee" also means an individual who provides services or labor in a job which has been created indirectly through investment in the new commercial enterprise. This definition shall not include independent contractors.
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> * * *
>
> *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 Part 5 of the petition, the petitioner indicated that there were two employees at the time of his investment, nine currently, that his investment had resulted in all nine positions and that he would create an additional two jobs. In his cover letter, counsel asserts that the hotel has seasonal employees and utilizes contractors for some of the renovations. Counsel opines that the petitioner's "good faith effort and commitment to create jobs for the local economy is enough to meet his

requisite burden." The statute and pertinent regulations require that the petitioner demonstrate that he has created or will create 10 direct, full-time, permanent jobs within two years. Sections 203(b)(5)(A)(ii) and 203(b)(5)(D) of the Act; 8 C.F.R. § 204.6(e) (definition of employee); 8 C.F.R. § 204.6(j)(4)(i); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1039.

The petitioner submitted the following Forms W-4: 41 for 2000 and four for 2005. These forms cannot demonstrate how many employees were working at one time. The petitioner also submitted handwritten employment receipts for various periods in 2005 and handwritten wage and payroll tax summaries for January through April 2005. The petitioner also submitted printed payroll summaries for January 2005 and September through December 2005. These summaries contain typographical errors. For example, an amount is crossed out and replaced with the year 2005 on the September 2005 summary and while the first two weeks of that month indicated September 2005, the last three weeks indicate September 2006. The November 2005 summary says "Oct.," which is crossed out and replaced with "Nov." The 2005 printed payroll summaries reflect the following:

Week ending:	Total Employees	Full-time Employees (35 hours or more)
January 14	10	5
January 21	7	3
January 28	6	3
September 2	9	4
September 9	11	5
September 16	9	7
September 23	15	6
September 30	10	6
October 7	23	6
October 14	14	2
October 21	20	12
October 28	15	2
November 4	19	11
November 11	13	9
November 18	18	9
November 23	11	2
December 2	14	3
December 7	9	6
December 14	13	9
December 21	10	8
December 28	12	4

These figures do not demonstrate the consistent employment of at least 10 full-time employees. The petitioner also submitted a business plan. The plan indicates that [redacted] would oversee the renovation and sale of condominium units and that a separate but affiliated corporation, [redacted], would collect management fees from unit owners. The plan projects selling 20 units in 2005, another 20 units in 2006 and the final four units in 2007. The

plan calls for hiring renovation employees beginning in October 2004 and house staff employees "ongoing." The personnel plan calls for a chief executive officer, two managers, two housekeeping staff, one maintenance staff, a construction supervisor, a plumber, an electrician, a carpenter and two "helpers" in 2005, 2006 and 2007. The plan does not explain why two full-time housekeeping staff would be required in 2007, when only four units would remain unsold. The plan also fails to project employment after the sale of the final unit in 2007. The director concluded in her notice of intent to deny that the petitioner had not demonstrated that [redacted] regularly employed 10 full-time employees and that the petitioner had not explained how the sale of condominium units would generate new employment or even maintain current employment. The director requested Forms I-9 for current employees and recent "State Employment Tax Reports."

In response, counsel asserts that [redacted]. already employs 10 full-time employees and that the business plan, previously submitted, demonstrates the continued need for these employees. The petitioner submits 11 Forms I-9 and handwritten summaries of wages and payroll taxes for January through March 2006. The payroll summaries reflect 17 employees in January, 14 employees in February and 13 employees in March. Employees working full-time for a month in Florida in 2006 would earn wages of at least $896 ($6.40[4] multiplied by 35 hours multiplied by four weeks). The highest number of possible full-time employees (those earning at least $896 per month) during January through March 2006 was 11, 10 and eight respectively.

The petitioner also submitted the prospectus and contracts for condominium units revealing that the condominiums would be managed by [redacted] Article VII of the prospectus provides:

> All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of window screens, the entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or other property belonging to the Unit Owner shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.

The petitioner failed to explain how this provision is consistent with the need to employ housekeeping staff, maintenance workers, electricians, plumbers and construction workers full-time after the last unit is sold in 2007.

The director concluded that the petitioner had failed to provide the requested state employment tax reports and that the business plan did not explain why the positions that are related to the

[4] Effective January 1, 2006, Florida's minimum wage was $6.40. *See* http://www.fuba.org/Alert.cfm?idsAlert=16 (accessed March 10, 2009 and incorporated into the record of proceeding).

construction of units would be full-time permanent positions. The director also notes the lack of evidence of the number of employees at the hotel before [redacted]. began reorganizing the business to condominium development. Counsel makes no attempt to address this issue on appeal.

We concur with the director that the petitioner failed to submit the requested Employer's Quarterly Reports, Form UCT-6 in Florida.[5] We further concur with the director that the business plan fails to explain the need for 10 full-time permanent positions with [redacted] after the final unit is sold.

In light of the above, we uphold the director's finding that the petitioner has not established that [redacted], the new commercial enterprise identified on the petition, will create 10 new full-time permanent positions.

SOURCE OF 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:
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> (i) Foreign business registration records;
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> (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;
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> (iii) Evidence identifying any other source(s) of capital; or
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> (iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. *Matter of Ho*, 22 I&N Dec. 206, 210-211 (Comm'r. 1998); *Matter of Izummi*, 22 I&N Dec. at 195. Without documentation of the path of the funds, the

[5] Available for download at http://dor.myflorida.com/dor/forms/2008/uct6.pdf, accessed March 10, 2009 and incorporated into the record of proceedings.

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. 158, 165 (Comm'r. 1998) (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 1025, 1040 (E.D. Calif. 2001) *aff'd* 345 F.3d 683 (9th Cir. 2003) (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).

Beyond the decision of the director, the petitioner also failed to sufficiently document the source of the invested 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).

While the petitioner submitted evidence of his interest in two Canadian companies, he did not submit his own income tax returns. Thus, he has not established his own level of income from these companies. *Matter of Izummi*, 22 I&N Dec. at 195. While the petitioner claims that his April 5, 2005 investment derives from the sale of his home, the record contains no evidence of this sale and does not trace the funds back to this sale.

Thus, the record does not fully establish the lawful source of the petitioner's invested funds.

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.