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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

B7

[redacted]

DATE: MAY 09 2011 Office: CALIFORNIA SERVICE CENTER 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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Mary Gulunson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, 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 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 of lawfully obtained funds.

On appeal, counsel asserted that information in the director's second request for additional evidence suggested the director issued the request in error, causing the petitioner to resubmit previously submitted evidence. Counsel further asserted that she would submit a brief and/or additional evidence to the AAO within 30 days. Counsel dated the appeal August 23, 2010. As of this date, more than eight months later, this office has received nothing further. As such, the AAO will adjudicate the appeal on the record before the director. While the director's second request for additional evidence could have been more specific regarding the deficiencies in the record, counsel, having reviewed the bases for denial, has not explained what evidence the petitioner would have provided in response to a more specific request. Thus, remanding the matter to the director for a more specific request would serve no purpose.

The AAO concurs with the director's ultimate conclusion that the petitioner has not established his eligibility for the classification sought. Specifically, the record lacks evidence of an equity investment of the petitioner's personal assets, including indebtedness that is not secured by any of the new commercial enterprise's assets. The record also fails to trace the path of the invested funds back to a lawful source. Finally, beyond the decision of the director, the petitioner has not documented that he has created or will create the necessary *new* jobs.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

As noted by counsel in response to the director's first request for additional evidence, 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, went into effect 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 petitioner filed the instant petition 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, 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 record establishes that on January 31, 2006 purchased the , etc. of that certain Retail Tire Business known as As appears to have been operating a business at the location up until the sale, the petitioner must demonstrate that he has created or will create 10 jobs above and beyond those already present at the business.

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:

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

On the Form I-526 petition, the petitioner indicated that he made an initial investment of $600,000 on January 31, 2006 and had made a total investment of $800,000. The petitioner indicated that the investment consisted of $600,000 in debt financing and $205,000 in a U.S. bank account.

Counsel initially asserted that the petitioner purchased the business through "a personal loan for $600,000" and transferred over $200,000 to [redacted] that the company used for its expenses. The petitioner submitted the sales contract and closing statement listing the buyers as the petitioner, his wife and [redacted] and a security agreement of $600,000.

The petitioner also submitted his wife's Wells Fargo bank statements reflecting a $516,451.74 mortgage on the petitioner's address at the time, [redacted], and an equity line with an outstanding balance of $144,413 as of February 28, 2006. The statements also reflect a "Deposit Made in A Branch/Store" of $130,000 on February 22, 2006 and a transfer of $130,000 to the petitioner's account at Union Bank of California on February 23, 2006. While the company checks are issued on an account at Union Bank of California, the petitioner did not submit

the statements for that account confirming that the petitioner or his wife transferred the $130,000 to the company account at that bank. Moreover, the petitioner did not document the source of the $130,000 his wife deposited in her Wells Fargo account on February 22, 2006. The petitioner also submitted an equipment lease that counsel characterizes as a loan to the petitioner. The lessee is, in fact, Sunshine Petroleum.

In addition, the petitioner submitted the minutes of the first board meeting for On pages 9 and 10, the minutes reflect that the corporation sold 1,000 shares to the petitioner for $10,000 and 10 shares to his wife for $100.

Finally, the petitioner submitted Internal Revenue Service (IRS) Form 1120S U.S. Income Tax Return for an S Corporation. Schedule L indicates that maintained a mortgage with a balance of $551,962 at the end of the year. Schedule L also lists no capital stock or additional paid-in-capital but, instead, a loan from shareholders of $195,269.

On February 4, 2009, the director requested evidence that the petitioner's personal assets secured the $600,000 loan. The director also requested additional evidence that the petitioner transferred the $130,000 to the company account. Finally, the director requested evidence that the petitioner had committed to investing the remaining $200,000.

In response counsel asserted that the petitioner was submitting the "complete loan agreement" for the original business purchase and evidence that the petitioner had purchased an additional property for $800,000. Counsel did not address the $130,000 transfer, asserting instead that the original $600,000 loan and the new $800,000 purchase price represent a sufficient investment.

The petitioner submitted a Security Agreement Note signed by the petitioner and his wife individually and on behalf of The collateral description is blank other than the handwritten word "Copies."

The petitioner also submitted the bulk transfer escrow instructions relating to the January 31, 2006 sale. The total consideration for the sale is inconsistent. Specifically, the total consideration is listed as $600,000 payable through no cash and $340,000 in the form of a new Security Agreement. The addendum states that it is understood between the parties that "the amount of the loan is to be $600,000.00 rather than $260,000" but the original agreement did not use the sum $260,000. The agreement states: "The above Security Agreement is to be *additionally* secured by a Trust Deed on the real property commonly known as " (Emphasis added.) The petitioner also submitted an addendum stating:

> Parties hereto acknowledge and agree that the address of the business is rather than 4632 as set forth in your original instructions.
>
> Seller is also aware that the *additional* security for loan is a THIRD TRUST DEED on the real property commonly known as

(Italics emphasis added.) The petitioner further submitted a "Short Form Deed of Trust and Assignment of Rents" listing the petitioner's wife, "a single woman" as the trustor and . at the trustee. The deed relates to in the City of Los Angeles." The record does not document the actual address of this property.

The petitioner also submitted a Grant Deed and Bill of Sale of Business whereby the petitioner purchased on August 28, 2008. The petitioner did not submit the closing statement such that the record documents how the petitioner financed this purchase.

The director concluded that the petitioner had not documented his transfer of $205,000 in cash from his personal account to a business account as implied on the petition. The director further concluded that the petitioner had not sufficiently documented that "he incurred debt financing on behalf of the enterprise totaling $600,000." Finally, the director concluded that the petitioner had not documented the transfer of any funds relating to the 2008 purchase of

The director's concerns are reasonable based on the record before her. Moreover, the record lacks evidence of an equity investment by the petitioner.

Cash Transfers

The record contains no documentation of cash transfers from the petitioner to the new commercial enterprise. As stated above, the petitioner's wife transferred $130,000 to the petitioner's own personal account and counsel did not respond to the director's request for documentation of transfers to the new commercial enterprise.

$600,000 Loan

As stated above, the bulk transfer escrow agreement, in the original document and addendum, states that the security interest in the petitioner's property, a third trust deed, constitutes additional security, revealing the existence of a primary security that the petitioner has not documented. In addition, lists a $551,962 mortgage as its own liability on its 2006 schedule L. Moreover, the record does not establish that in the City of Los Angeles" is the petitioner's address in Torrance, California. Finally, the record does not resolve why the deed lists her as a single woman.

Even assuming the petitioner's wife did execute a third trust deed security in her property as an additional security, a secured personal guaranty does not resolve the issue. If the assets of the new commercial enterprise secure the loan in any way, it is not a qualifying investment. 8 C.F.R. § 204.6(e) (definition of "capital"); *Matter of Soffici*, 22 I&N Dec. 158, 162-63 (Comm'r. 1998). The petitioner has not established that, in the event of default, the lender would attempt to collect on its interest in the petitioner's property, which is subordinate to two other interests (presumably the Wells Fargo mortgage and equity line of credit documented in the record), rather than reclaim the fixtures and equipment of the new commercial enterprise.

Finally, the petitioner lists a new address on appeal, raising the question as to whether his wife even still owns the property for which a third trust deed secures the loan.

In light of the above, the petitioner has not established that the $600,000 constitutes a personal investment.

$800,000 Property Purchase

As stated by the director, the record lacks evidence documenting how the petitioner financed this purchase. Moreover, the purchase took place in 2008, after the date of filing. While the petitioner need only be actively in the process of investing the required amount as of the date of filing, the petitioner must have actually committed to make the entire investment as of that date. 8 C.F.R. § 204.6(j)(2). Evidence of a mere intent to invest is insufficient. *Id.; Matter of Ho*, 22 I&N Dec. 206, 210 (Comm'r. 1998). It is acknowledged that, unlike the petitioner in *Matter of Ho*, this petitioner has an operating business. Regardless, the case stands for the proposition that all the funds must be at risk. *Matter of Ho* states:

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

Id. at 210.

A petitioner must establish eligibility at the time of filing; a petition cannot be approved on a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). At the time of filing, the petitioner had not established that any money was committed to purchase C&C Auto Repairs or that the petitioner had entered into an irrevocable agreement to purchase the business.

In light of the above, the petitioner has not established that the $800,000 was part of his personal qualifying investment as of the date of filing.

Nature of any Funds Committed to the Business

The petitioner must demonstrate an equity investment. 8 C.F.R. § 204.6(e) (definition of "invest"). As discussed above, pages 9 and 10 of the initial corporate minutes reflect only that the petitioner and his wife paid $10,100 for 1,010 shares of stock. [redacted] 2006 IRS 1120S, schedule L, reflects no stock or additional paid-in-capital. Rather, schedule L reflects $195,269 in loans from shareholders. A contribution in exchange for a debt obligation between the petitioner and the new commercial enterprise cannot be considered part of a qualifying investment. 8 C.F.R. § 204.6(e) (definition of "invest").

Summary

In light of the above, the petitioner has not established the transfer of any funds to the new commercial enterprise, the use of financing that is not secured by the assets of the new commercial enterprise, or that any contributions to the new commercial enterprise are equity investments rather than loans. Thus, the petitioner has not established a qualifying investment of $1,000,000.

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;
> >
> > (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
> >
> > (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 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). An unsupported letter indicating the number and value of shares of capital stock held by

the petitioner in a foreign business is also insufficient documentation of source of funds. *Matter of Ho,* 22 I&N Dec. at 211.

Initially, counsel asserted that the "bulk" of the petitioner's investment derives from the petitioner's "personal" loan of $600,000. The petitioner then asserts that the petitioner "still retains a 50% ownership share in the Canadian corporation, as evidenced by the enclosed copy of his Stock Certificate." On the petition itself, the petitioner acknowledged entering the United States in 1999, overstaying his visa and working in the United States without authorization.

The petitioner submitted a January 10, 2000 stock certificate for 50,000 shares in t, and the petitioner's personal bank statements for his Wells Fargo account reflecting wire transfers from Canada. and initiated two of these transfers; the identity of the remaining senders is not documented. The record does not establish the relationship between the petitioner and either of these two individuals. Thus, the petitioner has not traced the funds back to a lawful source. Moreover, the petitioner has not documented that he eventually transferred these funds to an account of the new commercial enterprise.

On February 4, 2009, the director requested tax documentation and audited financial statements for the petitioner's foreign company and the petitioner's tax returns. In response, the petitioner resubmitted the stock certificate for and submitted the petitioner's personal U.S. IRS Form 1040 Individual Income Tax Returns for 2002 through 2007. The petitioner's tax returns reflect adjusted gross income of $29,371; $54,727; $33,280; $78,514; and $79,200 respectively. Without submitting tax documentation or financial statements for , the petitioner cannot establish how profitable that company is or how much income the petitioner may have personally derived from that company.

On appeal, counsel asserts that he presumed the director's second request for additional evidence dated June 12, 2009 was in error because it stated that the record contained no evidence of the lawful source of the invested funds. The AAO acknowledges that the June 12, 2009 request did not acknowledge the evidence submitted and explain the deficiencies in that evidence. Nevertheless, as will be discussed below, the petitioner did not submit all of the evidence requested in the February 4, 2009 notice and the director was under no obligation to issue a second request. 8 C.F.R. § 103.2(b)(8)((ii). Moreover, the director's denial set forth specific deficiencies that counsel fails to address on appeal. Thus, any ambiguity in the June 12, 2009 notice does not warrant a remand of the matter to the director for further actions.

The director concluded that the wire transfers themselves do not trace the funds to their source. The director further concluded that the petitioner's documented share in a Canadian company and his U.S. income, insufficient to cover the claimed investment and earned without authorization, cannot document the lawful source of $1,000,000 in invested funds.

The director's concerns are reasonable based on the record before her. As the petitioner did not submit the requested financial statements or tax returns for as requested, he cannot document how much income, if any, he derived from his Canadian company. The record

does not document the identity of most of the individuals or entities who transferred funds to the petitioner from Canada or the relationship between the petitioner and the two individuals who transferred funds to the petitioner. Moreover, the petitioner did not document that he transferred any of those funds into the new commercial enterprise's account. The record lacks any evidence regarding the financing of the 2008 business purchase.

In light of the above, the petitioner has not documented that he has lawfully accumulated $1,000,000 for purposes of investment either through cash transfers or assets available to repay the loans described above.

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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> * * *
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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.*, 229 F. Supp. 2d at 1039 *aff'd* 345 F.3d at 683 (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 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.

While not directly discussed by the director, the petitioner has also failed to demonstrate that his investment will create the required number of new jobs.

First, while the petitioner claims on the petition that there were no jobs at the time of his investment, the purchase agreement suggests it was an operational business on the date of sale. The petitioner

has not documented the number of employees at the time of purchase. Thus, while the petitioner submitted a quarterly wage and withholding report documenting the employment of seven employees other than himself and his wife in the fourth quarter of 2007, the petitioner has not documented that this number represents an increase over the number of previous employees. Moreover, even seven employees is less than the requisite 10.

On February 4, 2009, the director requested tax records and Forms I-9 for current employees and a comprehensive business plan explaining how the business will create the remaining necessary jobs. In response, counsel asserted that the business already employed 10 full-time qualifying employees. The petitioner submitted IRS Forms W-4 and Forms I-9 for 10 purported employees. Only one of the employees is listed on the fourth quarter 2007 wage and withholding report. Yet, other employees signed their IRS Forms W-4 in January 2007 or earlier and, thus, if still working in 2009 should have appeared on the fourth quarter 2007 wage and withholding report. Finally, several Forms W-4 postdate the director's request for additional evidence. The record does not contain more recent quarterly returns or payrolls record documenting the full-time employment of these individuals. Forms I-9, by themselves, do not document employment. *Matter of Ho,* 22 I&N Dec. at 212.

Finally, while we have verified that the individuals are "qualifying" as defined at 8 C.F.R. § 204.6(e), the Forms I-9 are the originals rather than copies and lack the name of the company. Some of them are undated and others lack the employee's signature. The poor quality of these Forms I-9 and the petitioner's willingness to submit the originals raise questions as to whether they are the actual Forms I-9 for the employees of [redacted]. Ultimately, like a delayed birth certificate, those IRS Forms W-4 and Forms I-9 obviously prepared after the director's request for additional evidence raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

In light of the above, the petitioner has not established the total number of jobs that will represent 10 more than the preexisting number when he purchased the business or how many full-time jobs he has created. Thus, he must submit a business plan that meets the requirements quoted above. The petitioner did not submit any business plan.

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.