

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



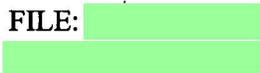
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 16 2013**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: Petitioner: 

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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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 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 [REDACTED] that purchased the [REDACTED] in [REDACTED] Kansas, on August 23, 2011. The petitioner indicated on part 2 of the petition that the business is not located in a targeted employment area. Thus, the required amount of capital in this case is \$1,000,000.

In her July 18, 2012 decision, the director denied the petition, finding that the petitioner failed to establish that the claimed equity investment has created or will create at least 10 full-time positions for qualifying employees. On appeal, the petitioner submits a four-page statement and additional documents. The petitioner noted on page 1 of the Form I-290B, Notice of Appeal or Motion, filed on August 10, 2012, that he would submit a brief and/or additional evidence to the AAO within 30 days. As of the date of this decision, the AAO has received nothing further. The appeal, therefore, will be adjudicated based on evidence currently in the record, including the materials the petitioner submitted on appeal.

For the reasons discussed below, the AAO finds that the petitioner has not overcome the director's ground for denial. In addition, the petitioner has failed to document the lawful source of the claimed equity investment or that the job-creating entity is "new." The appeal will therefore 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 BACKGROUND

The petitioner filed the petition on October 6, 2011, supported by the following types of evidence: (1) a partial copy of the petitioner's passport; (2) documents relating to [REDACTED] (3) documents relating to [REDACTED] August 23, 2011 purchase of the [REDACTED] (4) an October 3, 2011 letter from [REDACTED] President of [REDACTED]

NA; and (5) documents from the Canada Revenue Agency relating to the petitioner's 2010 income taxes.

On February 2, 2012, the director issued a Request for Evidence (RFE), requesting the petitioner to provide additional information, including: (1) evidence that the petitioner has invested or is actively in the process of investing the required amount of capital, and that the capital has been placed at risk to generate a return; (2) evidence relating to the establishment of a new commercial enterprise; (3) evidence of the lawful source of the petitioner's claimed equity investment; and (4) evidence that the claimed equity investment has created or will create at least 10 full-time positions for qualifying employees.

On April 17, 2012, the petitioner responded to the director's RFE with a letter and documents, some of which the petitioner had previously submitted. The documents include: (1) documents relating to [REDACTED] including its purchase of the [REDACTED] (2) documents from the [REDACTED] relating to an August 25, 2011 wire transfer of \$29,982 from [REDACTED] account ending in [REDACTED] (3) documents from [REDACTED] relating to an August 23, 2011 deposit of \$24,483 in [REDACTED] account ending in [REDACTED] (4) documents from [REDACTED] relating to the petitioner's account ending in [REDACTED] reflecting a credit of 100,000 Canadian dollars (CAD), converted to \$102,223.73; (5) a wire transfer receipt reflecting that the petitioner and [REDACTED] transferred \$100,000 to [REDACTED] on August 11, 2011; (6) documents from [REDACTED] relating to an August 22, 2011 wire transfer of \$799,982 from [REDACTED] (7) [REDACTED] February 2012 bank statement for an account ending in [REDACTED]; (8) a September 28, 2011 letter from [REDACTED] a financial planner at [REDACTED] attesting to the petitioner's accumulation of funds through his businesses; (9) a Management Agreement between [REDACTED] (10) an April 12, 2012 letter from [REDACTED] a certified public accountant at [REDACTED] asserting that he would not have financial statements prepared for [REDACTED] before April 26, 2012; (11) [REDACTED] October 2011 to December 2011 Employer's Quarterly Federal Tax Return, Internal Revenue Service (IRS) Form 941; (12) [REDACTED] employees' 2011 Wage and Tax Statements, IRS Forms W-2, and 2011 Transmittal of Wage and Tax Statements, IRS Form W-3; (13) documents relating to the operation of the [REDACTED] (14) documents relating to the petitioner's and [REDACTED] registered retirement saving plans with account numbers ending in [REDACTED] and [REDACTED] (15) the petitioner and [REDACTED] bank statement for an account ending in [REDACTED]; (16) documents from [REDACTED] for accounts ending in [REDACTED] (a line of credit) and [REDACTED] (17) bank statements from [REDACTED] for accounts ending from 0500 to 0503; (18) a list of the [REDACTED] employees; and (19) an appraisal of the hotel indicating the year of construction as "1963 – 1981)."

On May 10, 2012, the director issued a second RFE, requesting that the petitioner provide additional information, including: (1) evidence of the lawful source of the petitioner's funds; and (2) evidence that the claimed equity investment has created or will create at least 10 new full-time positions for qualifying employees or evidence that the hotel was a troubled business when [REDACTED] purchased it. In response, the petitioner provided a two-page statement and the following types

of documents, some of which the petitioner had previously filed: (1) a one-page untitled document with five headings; (2) a May 22, 2012 letter from [REDACTED] (3) bank related documents showing the petitioner's available funds as of August 2011; (4) bank related documents showing funds the petitioner wired to [REDACTED]; (5) bank related documents showing the petitioner's funds from December 2011 to March 2012; (6) documents from the [REDACTED] relating to the petitioner's 2011 taxes; and (7) a list entitled [REDACTED] New Hires Since 3/1/12."

In her July 18, 2012 decision denying the petition, the director concluded that the petitioner's evidence failed to show that the claimed equity investment has created or will create at least 10 new full-time positions for qualifying employees.

On appeal, the petitioner asserts that the director erred. The petitioner has attached the following documents to the Form I-290B: (1) bank documents relating to the petitioner's claimed equity investment; (2) an August 1, 2012 letter from [REDACTED] (3) the [REDACTED] 2010 to 2011 unaudited financial statements; (4) an undated document entitled '[REDACTED]'; (5) Employment Eligibility Verification, Forms I-9; and (6) an August 2012 lease agreement between [REDACTED] and related documents.

III. ISSUES ON APPEAL

A. Employment Creation

The regulation at 8 C.F.R. § 204.6(j)(4)(i) lists the evidence that a petitioner must submit to document employment creation, including photocopies of relevant tax records, Form I-9, or other similar documents for 10 qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or a copy of a comprehensive business plan showing the need for not fewer than 10 qualifying employees. If the petitioner invests in a pre-existing, ongoing business, then the petitioner must create no fewer than 10 qualifying positions, and he "cannot directly cause a net loss of employment." *Matter of Hsiung*, 22 I&N Dec. 201, 204-05 (Assoc. Comm'r 1998). Moreover, "it is the job-creating business that must be examined in determining whether a new commercial enterprise has been created," or if the business is a pre-existing, ongoing business. *Matter of Soffici*, 22 I&N Dec. 158, 166 (Assoc. Comm'r 1998).

If the evidence does not show that the petitioner's equity investment has resulted in the creation of at least 10 qualifying, full-time positions, the regulation at 8 C.F.R. § 204.6(j)(4)(i) requires the petitioner to provide a copy of a comprehensive business plan showing the need for not fewer than 10 qualifying employees. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). 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. *Id.* Elaborating on the contents of an acceptable business plan, *Matter of Ho* states that the plan should contain a market analysis, the pertinent processes and suppliers, marketing strategy, organizational structure, personnel's experience, staffing requirements, timetable for hiring, job descriptions, and projections

of sales, costs and income. The decision concludes: "Most importantly, the business plan must be credible." *Id.*

The regulation at 8 C.F.R. § 204.6(e) defines "employee" as an individual who provides services directly to the new commercial enterprise and excludes independent contractors. The same regulation defines "qualifying employee" as "a United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States." The definition excludes the petitioner, the petitioner's spouse, sons, or daughters, or any nonimmigrant alien. Section 203(b)(5)(D) of the Act, as amended, now defines "full-time employment" as "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 also means continuous, permanent employment. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1039 (E.D. Ca. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (finding this construction not to be an abuse of discretion).

1. Investment in a Troubled Business

The petitioner indicated on part 4 of the petition that the new commercial enterprise, [REDACTED] resulted from a capital investment in an existing business. The evidence in the record shows that on August 23, 2011, [REDACTED] purchased an existing business, the [REDACTED] for \$900,000. The petitioner claimed that the [REDACTED] was a troubled business. The regulation at 8 C.F.R. § 204.6(j)(4)(ii) permits an alien to include preserved jobs where the investment is made in a troubled business. The petitioner, however, has provided insufficient evidence to establish that before his equity investment, the [REDACTED] was a troubled business as defined under the regulation at 8 C.F.R. § 204.6(e).

The regulation at 8 C.F.R. § 204.6(e) provides in relevant part:

Troubled business means a business that has been in existence for at least two years, has incurred a net loss for accounting purposes (determined on the basis of generally accepted accounting principles) during the twelve- or twenty-four month period prior to the priority date on the alien entrepreneur's Form I-526, and the loss for such period is at least equal to twenty percent of the troubled business's net worth prior to such loss. For purposes of determining whether or not the troubled business has been in existence for two years, successors in interest to the troubled business will be deemed to have been in existence for the same period of time as the business they succeeded.

The priority date in this matter is October 6, 2011. Thus, the relevant twelve and twenty-four month periods prior to that date begin in October 2010 and October 2009. As such, the petitioner must demonstrate the business' net worth as of October 2009 or October 2010, and the net loss during the twelve or twenty-four month period beginning in either October 2010 or October 2009.

According to a May 22, 2012 letter from [REDACTED] "the [REDACTED] was purchased by [the petitioner] at a loss to the bank, *i.e.*, the loan was more

than [the petitioner's] purchase price and that the preceding 12 months that the bank owned the property it operated at a loss." According to a subsequent letter, dated August 1, 2012, [redacted] stated:

The [redacted] was deeded to the Bank because of past due payments that could not be made. The Hotel was losing [sic] money and the owners had no further resources. This Hotel was one of many of the same ownership that went out of business. There is no financial information available from the previous owner reflecting their losses.

Attached you will find losses the [B]ank had through June 30, 2011 in the amount of \$167,961.46. The Hotel never made money while the bank owned it.

The mere fact that the [redacted] was operating at a loss is insufficient to establish that it constituted a troubled business under the regulation at 8 C.F.R. § 204.6(e). Instead, under the regulation, the petitioner must provide information relating to the [redacted] net loss during the relevant period and net worth prior to that loss to establish that it constituted a troubled business. According to the unaudited financial statements attached to [redacted] August 1, 2012 letter, the net worth or total equity of the [redacted] as of September 30, 2010, approximately 12 months before the petitioner filed the petition on October 6, 2011, was \$41,158.51. The record contains no additional information relating to the [redacted] net worth as of approximately October 2009, so the AAO will look at the relevant twelve-month period.

The unaudited financial statements indicate that during the six-month period ending June 30, 2011, the [redacted] net loss was \$98,967.38. This amount does not include any income or loss from October 2010 through December 2010 or July 2011 through September 2011. Thus, neither the unaudited financial statements nor any other evidence in the record reveals the [redacted] net income or loss for the twelve-month period between September 30, 2010 and September 30, 2011. Under the regulation at 8 C.F.R. § 204.6(e), the petitioner must show that during the twelve-month period ending September 30, 2011, the [redacted] net loss was at least \$8,231.70, which would be 20 percent of \$41,158.51. As the hotel might have had net income in the October, November, and December 2010 or July, August and September 2011 that would have reduced its net loss of \$98,967.38 between January and June 2011, the petitioner has not established a sufficient net loss during the full twelve-month period prescribed by regulation. As the petitioner has only provided information relating to the [redacted] net loss between January 2011 and June 30, 2011, the petitioner has not shown that the [redacted] net loss during the twelve-month period prior to the priority date on the petition is at least 20 percent of the [redacted] net worth prior to such loss.

Similarly, although the unaudited financial statements show that from September 30, 2009 to September 30, 2010, the [redacted] net loss was \$7,349.03, the petitioner has not provided information relating to the [redacted] net worth prior to such loss, or as of September 30, 2009. As such, the petitioner has failed to show that the [redacted] net loss during the 24-

month period ending on the priority date of the petition, was at least 20 percent of the net worth prior to such loss.

In his response to the director's February 2, 2012 RFE, the petitioner stated that the "assets worth \$1.9 m. have been offered for sale for \$900,000 (\$.90 m). It implies that vendors are in need of getting rid of the assets." According to an appraisal completed by as of May 18, 2011, "the market value of the fee simple estate in the hotel portion of the [] property" was \$1.9 million, and "the market value of the fee simple estate in the overall subject property" was \$1.1 million. The petitioner, however, has failed to show that these figures are relevant to the definition of a troubled business at 8 C.F.R. § 204.6(e).

Accordingly, the petitioner has provided insufficient evidence showing that the constituted a troubled business as defined under the regulation at 8 C.F.R. § 204.6(e).

2. Job Preservation

Had the petitioner demonstrated that the hotel met the regulatory definition of a troubled business, the regulation at 8 C.F.R. § 204.6(j)(4)(ii) provides:

To show that a new commercial enterprise which has been established through a capital investment in a troubled business meets the statutory employment creation requirement, the petition must be accompanied by evidence that the number of existing employees is being or will be maintained at no less than the pre-investment level for a period of at least two years. Photocopies of tax records, Forms I-9, or other relevant documents for the qualifying employees and a comprehensive business plan shall be submitted in support of the petition.

The petitioner has failed to provide sufficient evidence showing that the number of existing employees is being or will be maintained at no less than the pre-investment level for a period of at least two years. According to part 3 of the petition, the petitioner made his initial investment of \$930,000 on August 23, 2011. According to part 5 of the petition, when he made his initial investment, the had 35 full-time employees. The petitioner, however, failed to support this claim with tax records, or other relevant documents. In part 3 of the petition, the petitioner claimed that as of October 6, 2011, the date he filed the petition, the number of the full-time employees remained at 35. He further claimed that his additional investment of \$70,000, which will be "working capital as & when required," will create an additional 10 full-time positions. The record, however, does not support this claim. According to an undated, half-page document entitled "Employment-Creation – Comprehensive Business Plan," filed in response to the director's February 2, 2012 RFE, the employed three senior staff, 29 full-time employees, and 12 part-time employees. It is unclear from the record if the senior staff consists of only full-time, qualifying employees. Assuming *arguendo* that the senior staff consists of only full-time employees and that the petitioner's claim of 35 employees at the time of his investment is accurate, this document shows that as of April 2012, eight months after the petitioner's initial investment, the number of the full-time employees decreased from 35 to 32.

This document shows that as of April 2012, the petitioner failed to maintain the same number of full-time employees that existed at the time of his investment.

Similarly, the petitioner submitted an undated document entitled [REDACTED] on appeal that also fails to show that the petitioner has maintained the same number of full-time employees that existed at the time of his investment. Specifically, the document includes a list of 19 employees "Employed at Purchase Time," and a list of 19 "New Hires." The document provides that four of the total 38 employees are part-time employees. This document shows that as of August 2012, 12 months after the petitioner's initial investment, the number of the [REDACTED] full-time employees decreased from 35 to 34. This document shows that as of August 2012, the petitioner failed to maintain the same number of full-time employees that existed at the time of his investment.

In response to the director's May 10, 2012 RFE, the petitioner provided an undated document entitled "[REDACTED] New Hires Since 3/01/12." Although this document lists 35 employees, the petitioner has failed to provide sufficient evidence, such as payroll documents, showing if any of the listed employees constituted a full-time employee such that he or she worked at least 35 hours per week. *See* section 203(b)(5)(D) of the Act.

Accordingly, even if the petitioner could show that the [REDACTED] constituted a troubled business, he has failed to show that he meets the statutory employment creation requirement, because he has failed to provide evidence that the number of existing employees is being or will be maintained at no less than the pre-investment level for a period of at least two years.

3. Job Creation

As the [REDACTED] does not constitute a troubled business, to meet the statutory employment creation requirement, the petitioner must show that his investment has created, or will create, at least 10 new, full-time positions, and must show that he has not directly caused a net loss of employment. *See Matter of Hsiung*, 22 I&N Dec. 204. As discussed above, the petitioner has shown that he has directly caused a net loss of employment.

In addition, the evidence fails to show that the petitioner's claimed equity investment has created or will create at least 10 new, full-time positions. In response to the director's February 2, 2012 RFE, the petitioner provided [REDACTED] October 2011 to December 2011 Employer's Quarterly Federal Tax Return, IRS Form 941. This document shows that 55 employees received wages, tips, or other compensation for the pay period including December 12, 2011. This document, however, fails to show the number of full-time or part-time employees, or the number of employees who constituted "qualifying employees" as defined under the regulation at 8 C.F.R. § 204.6(e). The 2011 Wage and Tax Statements, IRS Forms W-2, and Transmittal of Wage and Tax Statements, IRS Form W-3, similarly fail to establish the number of qualifying employees [REDACTED] hired during this quarter because these documents do not establish that the employees constituted full-time employees, working at least 35 hours a week. *See* section 203(b)(5)(D) of the Act. Moreover, the petitioner submitted 55 IRS Forms W-2, with wages, tips and other compensation

ranging from \$120.00 to \$9,197.82. These forms, however, do not establish that the hotel employed 55 employees concurrently at any one time.

As the evidence does not show that the petitioner's claimed equity investment has resulted in the creation of at least 10 new, qualifying, full-time positions, the petitioner must provide a copy of a comprehensive business plan showing the need for not fewer than 10 new, qualifying employees. See 8 C.F.R. § 204.6(j)(4)(i); *Matter of Ho*, 22 I&N Dec. at 213. The petitioner has failed to do so. In response to the directors February 2, 2012 RFE, the petitioner provided an undated document entitled "Employment Creation – Comprehensive Business Plan." This document provides that the [redacted] employed three senior staff, 29 full-time employees, and 12 part-time employees, and states that "[the] number of existing employees will be maintained or increased unless economic circumstances prohibit doing so." This document fails to show or even allege the [redacted] need for at least 10 full-time qualifying employees, in addition to the 35 full-time employees the petitioner claimed the [redacted] had before his investment. In response to the director's May 10, 2012 RFE, the petitioner provided an undated, untitled document, with five headings: Executive Summary, Business Description and Vision, Definition of the Market, Organization and Management, and Financial Management. These two documents do not constitute a comprehensive business plan. Specifically, neither document includes a market analysis, the pertinent processes and suppliers, marketing strategy, personnel's experience, staffing requirements, timetable for hiring or job descriptions. See *Matter of Ho*, 22 I&N Dec. at 213.

B. New Commercial Enterprise

Section 203(b)(5)(A)(i) of the Act states, in pertinent part, that: "Visas shall be made available . . . to qualified immigrants seeking to enter the United States for the purpose of engaging in a *new* commercial enterprise." (Emphasis added.) The regulation at 8 C.F.R. § 204.6(e) defines "new" as established after November 29, 1990.

The regulation at 8 C.F.R. § 204.6(h) further states that the establishment of a new commercial enterprise may consist of the following: (1) the creation of an original business, (2) the restructuring or reorganization of an existing business such that a new commercial enterprise results, or (3) an expansion of an existing business through the requisite investment, defined as a 40 percent increase in either net worth or number of employees.

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. This amendment did not, however, eliminate the requirement that the commercial enterprise be "new." Thus, the regulation at 8 C.F.R. § 204.6(h) is still relevant for commercial enterprises established by the petitioner or someone else prior to November 29, 1990.

Moreover, "[i]t is the job-creating business that must be examined in determining whether a new commercial enterprise has been created." *Matter of Soffici*, 22 I&N Dec. at 166. *Matter of Soffici*

held that a [REDACTED] did not constitute a new commercial enterprise, because although the motor lodge was purchased by [REDACTED] which was incorporated in 1997, the motor lodge “had been in operation for approximately 24 years and was an ongoing business at the time of purchase; [REDACTED] doing business as [REDACTED] has merely replaced the former owner.”

Similarly, in this case, according to the appraisal completed by [REDACTED], the [REDACTED] the job-creating business, was constructed between 1963 and 1981. As such, the [REDACTED] does not constitute a “new” commercial enterprise under the regulation at 8 C.F.R. § 204.6(e), which defines “new” as established after November 29, 1990. Furthermore, the petitioner has not provided evidence showing that [REDACTED] has restructured or reorganized the [REDACTED] or has engaged in an expansion of the [REDACTED] through the investment of the required amount, so that a substantial change (40 percent) in the net worth or number of employees results from the investment of capital. *See* 8 C.F.R. § 204.6(h).

In light of the above, the petitioner has not demonstrated that he made his claimed equity investment in a new commercial enterprise.

C. Source of Funds

As an additional issue, the petitioner has not documented the lawful source of the invested funds. The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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).

In order to establish the lawful source of funds, 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. 169, 195 (Assoc. Comm’r 1998). 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.

The petitioner has failed to document the lawful source of his funds. According to the petitioner’s May 29, 2012 statement, filed in response to the director’s May 10, 2012 RFE, the claimed equity investment represents funds “earned and saved by [the petitioner] and [his] wife [REDACTED] during [their] working lifespan from 1978 till [they] reached retirement age.” According to a September 28, 2011 letter from [REDACTED] the petitioner “has remitted US \$830,000 to [REDACTED] during the month of August 2011. This amount has been accumulated by [the petitioner] for many years of hard work through the various business [*sic*] he has operated.” The record, however, contains no information or evidence relating to what businesses, if any, the petitioner has had that

allowed him to accumulate the claimed equity investment of \$1,000,000. First, the petitioner's tax documents fail to show how he accumulated the claimed equity investment of \$1,000,000. Specifically, the petitioner has provided 2010 tax documents from the Canada Revenue Agency, showing that his total income was 44,309 CAD, or approximately \$44,374.70.¹ The petitioner has also provided 2011 tax documents from the Canada Revenue Agency, showing that his total income was 75,449 CAD, or approximately \$73,805.40.² The petitioner has not shown how he accumulated the claimed equity investment of \$1,000,000, based on the tax-related documents in the record.

Second, the petitioner has provided documents from [REDACTED] indicating that as of January 19, 2011, the petitioner and his wife's authorized credit limit for an account ending in 7150 was 1,480,000 CAD, or approximately \$ 1,491,800.³ These documents also show that as of April 19, 2011, four months before [REDACTED] purchased the [REDACTED] on August 23, 2011, the petitioner's debit balance was 1,474,575.30 CAD, or approximately \$1,533,460.⁴ The petitioner, however, has failed to provide documents showing that he transferred any of the funds he obtained through the authorized credit limit to [REDACTED], or that he used those funds to purchase the [REDACTED]. Specifically, the credit line still had a balance of CAD 1,454,109.05 as of March 19, 2012. Thus, while the petitioner traced the path of funds from accounts titled in the names of him and his wife, he did not document that the deposits into those accounts derived from the credit line or another lawful source.

In light of the above, the petitioner has not documented the lawful source of the funds he invested in [REDACTED]

D. 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.

¹ U.S. dollar amount calculated using the exchange rate for December 31, 2010 at www.oanda.com/currency/converter/, accessed on January 8, 2013 and incorporated into the record of proceeding.

² U.S. dollar amount calculated using the exchange rate for December 31, 2011 at www.oanda.com/currency/converter/, accessed on January 8, 2013 and incorporated into the record of proceeding.

³ U.S. dollar amount calculated using the exchange rate for January 19, 2011, at www.oanda.com/currency/converter/, accessed on January 8, 2013 and incorporated into the record of proceeding.

⁴ U.S. dollar amount calculated using the exchange rate for April 19, 2011, at www.oanda.com/currency/converter/, accessed on January 8, 2013 and incorporated into the record of proceeding.