

(b)(6)

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



U.S. Citizenship  
and Immigration  
Services

DATE: DEC 04 2013

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:

INSTRUCTIONS:

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

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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Chief, Immigrant Investor Program, 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]. According to the business plan initially filed in support of the petition, [REDACTED] bought the real estate property located at [REDACTED] for development into the [REDACTED]. The petitioner indicated on part 2 of the petition that the business is located in a targeted employment area. Thus, the required amount of equity investment is \$500,000.

In his June 12, 2013 decision, the director denied the petition on three bases. First, the petitioner did not demonstrate that he has placed the required amount of capital at risk for the purpose of generating a return on the capital. Second, the petitioner did not document the lawful source of the required amount of capital. Third, the petitioner did not establish that his claimed investment has created or will create at least 10 full-time positions for qualifying employees.

On appeal, the petitioner, through counsel, submits a Notice of Appeal or Motion (Form I-290B), a five-page letter and additional documents. On part 2 of the Form I-290B, submitted on June 28, 2013, counsel indicates, “[his] brief and/or additional evidence will be submitted to the AAO within 30 days.” As of this date, more than four months later, neither counsel nor the petitioner has submitted a brief or additional evidence. As such, the petitioner’s appeal will be adjudicated based on the documents in the record, including documents filed with Form I-290B. For the reasons discussed below, the petitioner has not overcome any of the director’s three grounds for denial. Accordingly, the petitioner’s appeal must 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 January 28, 2013, supported by the following evidence: (1) a January 22, 2013 letter from [REDACTED] who owns 52 percent of [REDACTED] (2) documents relating to [REDACTED] (3) a December 17, 2012 Letter Agreement between the petitioner and

(4) letters from the Florida state government designating certain tracks in [REDACTED] as a targeted employment area; (5) bank statements for an account Mr. [REDACTED] and the petitioner jointly owned; (6) bank documents entitled "[REDACTED]" relating to wires; (7) bank statements for the petitioner's accounts; (8) bank documents entitled "Single Customer Credit Transfer"; (9) documents relating to [REDACTED] for [REDACTED] a business in Egypt; (10) documents relating to [REDACTED] a business in Egypt; (11) [REDACTED] business plan; (12) documents relating to the construction and development of [REDACTED] and (13) documents relating to the [REDACTED] franchise.

On March 2, 2013, the director of the California Service Center 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; (2) evidence of the lawful source of the petitioner's funds; and (3) evidence that the claimed investment has created or will create at least 10 full-time positions for qualifying employees.

The petitioner responded to the director's RFE with a letter from counsel, dated May 16, 2013, and documents, some of which the petitioner had previously provided. The documents include: (1) a May 14, 2013 letter from Mr. [REDACTED] (2) a supplemental business plan; (3) Florida Department of State online printouts relating to [REDACTED] (4) [REDACTED] bank statements; (5) [REDACTED] bank statements; (6) documents relating to [REDACTED] (7) a [REDACTED] Franchise Agreement; (8) a \$25,000 check payable to [REDACTED]; and (9) an online printout relating to the conversion from Egyptian Pounds (EGP) to U.S. Dollars (USD).

In his June 12, 2103 decision denying the petition, the director concluded that the petitioner's evidence did not show: (1) the required amount of capital was placed at risk for the purpose of generating a return on the capital; (2) the lawful source of the required amount of capital; or (3) the claimed investment has created or will create at least 10 full-time positions for qualified employees.

On appeal, counsel files a five-page letter, dated June 27, 2013, and the following documents: (1) a May 30, 2013 United States Citizenship and Immigration Services (USCIS) Policy Memorandum; (2) a June 7, 2013 article entitled "EB-5 Policy Cautions – Part III: Commitment to Invest Rather than Mere Intent to Invest or Speculation about Investing," posted on [REDACTED] (3) a February 14, 2013 Loan Closing Statement and Disbursement Sheet; (4) documents relating to a title insurance policy; and (5) a July 5, 2006 Trustee's Deed.

### III. ISSUES ON APPEAL

#### A. Investment of Capital

The regulation at 8 C.F.R. § 204.6(e) defines "capital" and "investment." The regulation at 8 C.F.R. § 204.6(j)(2) explains that a petitioner must document that he or she has placed the required amount of capital at risk for the purpose of generating a return on the capital. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. The regulation then lists the types of evidence the petitioner may submit to meet this requirement.

In addition, the regulation at 8 C.F.R. § 204.6(e) provides:

*Commercial enterprise* means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned. This definition includes a commercial enterprise consisting of a holding company and its wholly-owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business. This definition shall not include a noncommercial activity such as owning and operating a personal residence.

*Id.* (emphasis added).

Thus, the petitioner must demonstrate a qualifying investment in a single commercial enterprise that may consist of a holding company and its wholly-owned subsidiaries. The plain language of the regulation states that only wholly-owned subsidiaries of the new commercial enterprise are part of the new commercial enterprise.

The evidence in the record does not establish that the petitioner has invested the required amount of capital in [REDACTED] or its wholly-owned subsidiaries, if any. First, the record contains inconsistent evidence relating to the business in which the petitioner has invested or plans to invest. Part 3 of the petition provides that the commercial enterprise in which the petitioner has invested is [REDACTED]. Mr. [REDACTED] January 22, 2013 letter similarly provides that the petitioner “has agreed to invest \$500,000 in a project for the building of a 7-11 shopping plaza known as [REDACTED] Florida.” In his May 14, 2013 letter, however, Mr. [REDACTED] provides that he is “the Founder of [REDACTED] in which [the petitioner] has agreed to invest the sum of \$500,000 to create ten (10) jobs.” The record, however, does not reveal that either [REDACTED] is a wholly-owned subsidiary of [REDACTED] that could be included within the new commercial enterprise pursuant to the definition of a commercial enterprise at 8 C.F.R. § 204.6(e). Rather, the evidence shows that [REDACTED] and [REDACTED] are affiliated entities Mr. [REDACTED] owned that he did not organize as a single holding company with wholly-owned subsidiaries. Indeed, on appeal, counsel states in his June 27, 2013 letter that “[REDACTED] are solely owned businesses of Mr. [REDACTED] and “they are not subsidiaries nor are they intended to be subsidiaries of the new commercial enterprise.” As such, Mr. [REDACTED] assertion in his May 14, 2013 letter, indicating that the petitioner intends to invest in [REDACTED] not merely in [REDACTED] is inconsistent with other evidence in the record. The petitioner has provided inconsistent documents and “it is incumbent upon [him] to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or documents], absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.” *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has provided no such evidence to explain or reconcile the inconsistent documents.

In addition, the Letter Agreement, which the petitioner initially filed in support of the petition, provides that the petitioner has paid [REDACTED] \$275,000 as of December 17, 2012. The evidence in the record, however, indicates that the petitioner has wired only \$274,568.80, not \$275,000, into an account

ending in 2176. In addition, Mr. [REDACTED] provides in his May 14, 2013 letter that the petitioner “did wire transfer funds from Egypt in the total sum of \$274,568.80.” The record does not include evidence of any additional wires by the petitioner.

Second, the petitioner has not established that he has transferred \$274,568.80 to [REDACTED], as claimed on part 3 of the petition. The bank statements for an account ending in 2176 show that the account holders are Mr. [REDACTED] and the petitioner, not [REDACTED]. The statement shows the following incoming wires: (1) \$49,946.20 on August 30, 2010; (2) \$24,940 on September 28, 2010; (3) \$24,946.20 on March 18, 2011; (4) \$49,946.20 on July 15, 2011; (5) \$24,946.20 on September 7, 2011; (6) \$24,948 on November 23, 2011; (7) \$24,948 on December 14, 2011; and (8) \$49,948 on July 5, 2012, which total \$274,568.80. Documents entitled “Swift Outgoing” and “Single Customer Credit Transfer” show that funds for six of the eight incoming wires came from the petitioner’s accounts ending in 1896, 3314 or 0235. The petitioner, however, has not submitted a “Swift Outgoing,” a “Single Customer Credit Transfer” or other evidence showing that the August 30, 2010 deposit of \$49,946.20 or the September 7, 2011 deposit of \$24,946.20 originated from his accounts or funds. Although the record includes bank statements for the petitioner’s accounts ending in 3314 and 0235, the petitioner has not provided certified translations for these statements, pursuant to the requirements at 8 C.F.R. 103.2(b)(3).<sup>1</sup> Specifically, the bank statements contain information in both English and a foreign language; the petitioner has not provided a certified translation for the information that is in a foreign language.

Moreover, the bank statement for the account ending in 2176 shows withdrawals following the incoming wires. The petitioner has not shown that the account holders for the account ending in 2176 transferred the debited funds into [REDACTED] accounts or used these funds for [REDACTED] business expenses. Specifically, the bank statements show the following debits: (1) a \$5,000 check on September 8, 2010; (2) a \$10,000 check on September 7, 2010; (3) a \$25,000 over-the-counter withdrawal on August 30, 2010; (4) a \$25,000 check on October 6, 2010; (5) a \$8,000 check on October 13, 2010; (6) a \$1,500 check on October 21, 2010; (7) a \$25,000 “Miscellaneous Debit” on April 11, 2011; (8) a \$10,000 check on September 9, 2011; (9) a \$25,000 check on September 6, 2011; (10) a \$10,000 check on September 21, 2011; (11) a \$10,000 check on October 4, 2011; (12) a \$10,000 check on October 28, 2011; (13) a \$10,000 check on October 31, 2011; (14) a \$15,000 check on December 1, 2011; (15) a \$10,000 over-the-counter withdrawal on November 28, 2011; (16) a \$10,000 check on December 20, 2011; (17) a \$1,000 transfer to an account ending in 7317; (18) a \$10,000 check on April 4, 2012; and (19) a \$4,000 check on August 9, 2012, totaling \$224,500.

In response to the director’s RFE, the petitioner submitted December 2012 through February 2013 bank statements for [REDACTED] account ending in [REDACTED], which show that the account had an ending balance of no more than \$10,222.46 during the three-month period. The bank statements do not indicate that the petitioner or anyone else deposited the funds from [REDACTED] or any of the petitioner’s accounts into [REDACTED] account ending in [REDACTED] or another [REDACTED] account.

<sup>1</sup> The regulation at 8 C.F.R. 103.2(b)(3) provides: “Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.”

On appeal, counsel asserts in his letter dated June 27, 2013, that “[t]he evidence does not show that funds have been transferred to [redacted] unless those funds were specifically used on behalf of and for the benefit of the new commercial enterprise, [redacted].” Counsel further asserts that the “evidence and documentation adduced by [the petitioner] in support of his [petition] clearly shows that all the monies were spent for the development of the commercial retail shopping center located in [redacted] owned by [redacted].” Mr. [redacted] states in his May 14, 2013 letter that [redacted] used the petitioner’s funds as follows: “\$175,000.00 to contractor; \$25,000.00 for permitting; \$25,000.00 to architect; [and] \$50,000.00 to contractor.” The evidence in the record supports neither counsel nor Mr. [redacted] assertions. Without documentary evidence to support the claim, counsel’s assertions will not satisfy the petitioner’s burden of proof. The unsupported assertions do not constitute evidence. *Matter of Obaighena*, 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). Indeed, going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

The record includes a September 19, 2012 \$4,778.53 check payable to the [redacted] from [redacted] account ending in [redacted] with a [redacted] note; and an October 12, 2012 \$1,250 check payable to [redacted] account ending in [redacted] corresponding to an invoice for [redacted]. The petitioner has not provided Stfen, Inc.’s bank statement for the account ending in [redacted] or provided sufficient evidence tracing the funds used to pay the [redacted] back to the funds the petitioner transferred to the account ending in [redacted] or another account the petitioner holds. The petitioner has also not explained why [redacted] would use [redacted] funds to pay [redacted] bills. Similarly, although the evidence includes a March 1, 2012 [redacted] Permit Receipt, noting a \$47,622.58 payment, the petitioner has not provided evidence showing that [redacted] paid the [redacted] with funds the petitioner wired into the account ending in [redacted]. In addition, although the record includes a number of proposals to develop the real estate property located at [redacted] as the director concluded in his decision, “the record does not include receipts, cancelled checks or other documents to corroborate [the] use of the petitioner’s funds on behalf of [redacted]” to develop the property.

Third, the evidence is insufficient to show that the petitioner is actively in the process of investing the remaining \$225,000 in [redacted]. The Letter Agreement provides that the petitioner has already invested \$275,000 and will invest an additional \$225,000. In his decision, the director observed that “Mr. [redacted] [] states that the petitioner will return to the U.S. in July 2013 and will provide an additional \$225,000 in funds at that time,” but concluded that the “record does not include bank or other financial records for the petitioner to show that he has committed any additional funds to this investment.” On appeal, counsel states that the petitioner “has financial abilities to invest the balance of the \$225,000 by July 2013 or within two years.” Counsel further asserts that the petitioner is “fully liable on his agreement to invest and is subject to suit by [redacted].” The record, however, lacks evidence showing that the petitioner is actively in the process of investing \$225,000, as the petitioner has not taken any meaningful concrete action to invest the funds and is not sufficiently committed to do so through a fully enforceable instrument, such as a secured promissory

note. See *Matter of Hsiung*, 22 I&N Dec. 201, 204 (Assoc. Comm'r 1998) (discussing the requirements for a promissory note as either an investment or evidence of being actively in the process of investing). In essence, the evidence shows the petitioner's mere intent to invest an additional \$225,000, or prospective investment arrangements entailing no present commitment. This petitioner's unsecured agreement is insufficient to meet the at-risk requirement. See *id.*; *Matter of Ho*, 22 I&N Dec. 206, 209-10 (Assoc. Comm'r 1998); see also 8 C.F.R. § 204.6(j)(2).

Finally, the petitioner has not explained how he is already eligible to be a [REDACTED] shareholder. The 2011 tax return documents, which the petitioner initially filed in support of the petition, indicate that [REDACTED] is an S-corporation. According to information provided on Internal Revenue Service (IRS) website, to qualify for S-corporation status, a corporation "may not include partnerships, corporations or non-resident alien shareholders."<sup>2</sup> The petitioner has not provided any evidence showing that he is currently eligible to be a shareholder of an S-corporation or that [REDACTED] is no longer an S-corporation.

In light of the above, the petitioner has not demonstrated a qualifying equity investment of personal funds of at least \$500,000.

#### B. Source of Funds

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 210-11; *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. In addition the regulation at 8 C.F.R. § 204.6(g)(1) provides:

The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien entrepreneur even though there are several owners of the enterprise, including persons who are not seeking classification under section 203(b)(5) of the Act and non-natural persons, both foreign and domestic, provided that the source(s) of all capital invested is identified and *all* invested capital has been derived by lawful means.

*Id.* (emphasis added.) In other words, the petitioner must show the lawful source of his funds as well as the lawful source of Mr. [REDACTED] funds.

On appeal, counsel asserts that the petitioner has "proven that the sources of funds are from a lawful source to wit, his profits from his business known as [REDACTED] in Egypt." Counsel further asserts, "[REDACTED] is a partnership of [the petitioner]. Therefore, [REDACTED] is not a separate company with a separate entity or separate legal distinction from [the petitioner]. The funds

<sup>2</sup> See <http://www.irs.gov/Businesses/Small-Businesses-%26-Self-Employed/S-Corporations>, accessed on November 8, 2013, and incorporated into the record of proceeding.

committed are his personal funds.” The petitioner submitted evidence pertaining to including a Civil Register Extract, license related documents, a page from website, and financial statements. The evidence does not support counsel’s assertions.

First, the record lacks evidence showing a transfer of funds from to the petitioner. In response to the RFE, the petitioner provided Profit and Loss Report relating to three years between 2009 and 2011. The report indicates that the net operating profit was “1,733,362.45” for 2009, “1,121,629.67” for 2010, and “1,049,343.23” for 2011. The petitioner also provided Balance Sheet listing assets, liabilities and partner funds as of December 2009, 2010 and 2011. The balance sheet shows the net partners’ funds as “7,656,848.01” as of December 2009, “8,082,074.79” as of December 2010, and “8,327,962.81” as of December 2011. Neither the Profit and Loss Report nor the Balance Sheet specifies in which currency the amounts appear. According to Mr. May 14, 2013 letter, the amounts appear in Egyptian Pounds (EGP). The Balance Sheet includes the above amounts for net partners’ funds, which are the petitioner’s alleged source of investment funds. The net partner funds line follows lines pertaining to capital, accumulated profit, year profit and “partner acc.” suggesting that the net share funds derive from these numbers. The petitioner has not explained, however, how the Balance Sheet preparer calculated the net partners’ funds using the amounts for capital, accumulated profit, year profit and “partner acc.”

Moreover, seven of the petitioner’s eight wires into the account ending in occurred in 2010 and 2011. The Balance Sheet, however, does not indicate that any of partners received funds from the business during these two years. Indeed, the petitioner has not provided any transactional evidence showing that he has ever received any funds from between 2010 and 2012, notwithstanding his status as a partner of the business. On appeal, counsel asserts that the “profit[] and loss statements for . . . clearly reflect the salaries and partnership funds received by [the petitioner].” The evidence in the record does not support counsel’s assertion. The profit and loss statement provides information relating to salaries without specifying the individual(s) who received the salaries, or evidence showing actually distributed the partners’ funds or, if it did, the amount it distributed to each partner. As such, the director correctly found that the petitioner has not submitted “evidence of the receipt and accumulation of funds from this business as the source of funds for the investment into ” In other words, the petitioner has not shown that the funds he wired to the account ending in 2176 came from Splendid Travel’s profits.

In response to the RFE, the petitioner provided January 2013 through March 2013 bank statements for an account ending in 3001. The bank statements show that during the three-month period, Mr. received two payments to his personal account, specifically on January 6, 2013 and January 8, 2013. The petitioner, however, did not receive any funds to his personal account. Instead, he received 35,000 EGP on January 13, 2013; 20,000 EGP on January 29, 2013; and 30,000 EGP on February 20, 2013 in his partner’s account. Assuming the funds Splendid Travel transferred to his partner’s account constitute his personal funds, the bank statements show that during the three-month period, the petitioner received a total of 85,000 EGP, or approximately \$12,772.19.<sup>4</sup> This amount does not establish that the petitioner accumulated the \$275,000 that he

<sup>4</sup> The petitioner received approximately \$5,336.58 on January 13, 2013; \$2,992 on January 29, 2013; and \$4,443.61 on February 20, 2013, totaling \$12,772.19. See <http://www.oanda.com/currency/converter/>, accessed on November 12, 2013, and incorporated into the record of proceeding.

claimed to have invested in 2010, 2011 and 2012 or that he would have an additional \$225,000 to invest in [REDACTED]

Third, in his RFE, the director requested specific evidence showing the lawful source of Mr. [REDACTED] claimed investment of \$2.5 million in [REDACTED]. In response, the petitioner provided a May 14, 2013 letter from Mr. [REDACTED] stating:

The source of my funds invested of \$2.5 Million Dollars are from lawful sources. As I previously explained to you, I am an entrepreneur and I have opened up a number of businesses and have been quite successful in them . . . .

According to the original business plan, Mr. [REDACTED] owned gas and convenience stores. The record, however, does not contain substantiating evidence showing that Mr. [REDACTED] accumulated at least \$2.5 million from these businesses. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Mr. [REDACTED] conclusory statements are insufficient to establish the lawful source of his claimed investment. As such, the director correctly concluded that “[t]he record does not include evidence of the source of funds of Mr. [REDACTED] investment capital and is therefore not sufficient to show all funds [invested in [REDACTED] derived from a lawful source.” See 8 C.F.R. § 204.6(g)(1). On appeal, counsel provides a Loan Closing Statement and Disbursement Sheet, showing that on February 14, 2013, [REDACTED] obtained a \$1.75 million loan from United Southern Bank. This February 2013 loan does not establish the lawful source of Mr. [REDACTED] claimed investment of \$2.5 million as noted in the original business plan supporting the January 2013 filing.

Finally, the record includes evidence relating to [REDACTED] for [REDACTED] a business in Egypt that the petitioner claims to own. On appeal, counsel has not continued to maintain that the funds the petitioner wired into the account ending in 2176 or will invest in [REDACTED] are profits from this business. As such, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. United States Att’y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

In light of the above, the petitioner has not shown that he lawfully accumulated \$500,000, documented the lawful source of his \$274,568.80 claimed investment in [REDACTED], or the lawful source of Mr. [REDACTED] \$2.5 million claimed investment in [REDACTED].

### C. 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-9s, 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. The regulation at 8 C.F.R. § 204.6(e) defines “employee” and “qualifying employee” as including, among other restrictions, full-time direct employees other than the petitioner.

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 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 record does not include any evidence showing that the petitioner's alleged investment has created any full-time positions. Instead, the record includes an original business plan and a supplemental business plan, indicating that the new commercial enterprise will create full-time positions in October 2013. Specifically, according to the original business plan, [REDACTED] will develop and operate a 7-Eleven store, a restaurant and a grocery store. The supplemental business plan, filed in response to the RFE, similarly provides that [REDACTED] will own a [REDACTED] store, an Italian/Mediterranean style restaurant and a fresh foods market, which will generate at least forty to fifty new full-time positions.

The record does not contain sufficient evidence showing that [REDACTED] will operate a [REDACTED] store, a restaurant or a market. In fact, the evidence indicates that [REDACTED] a business Mr. [REDACTED] not [REDACTED] owns, will operate the [REDACTED] store. Specifically, the October 3, 2012 [REDACTED] Franchise Agreement is between [REDACTED] and [REDACTED] and the Statement of Ownership Interests indicates that Mr. [REDACTED] owns 100 percent of the [REDACTED] store. As such, the director correctly concluded that "any jobs created by the 7-11 store would not be considered as part of the ten jobs to be created by [REDACTED]" On appeal, counsel asserts that the [REDACTED] store "will be assigned, the franchise agreement will then be assigned to [REDACTED]" Counsel, however, has not supported his assertion with any evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Moreover, although the business plans provide that [REDACTED] will operate a restaurant and a market by October 2013, the record contains no evidence, such as the requisite licenses from the state or local government, showing that [REDACTED] may operate these businesses. In addition, as the director pointed out in his decision, the June 14, 2012 agreement between Mr. [REDACTED] and [REDACTED] requires monthly progress payments. The petitioner has not provided documents, such as bank statements or canceled checks, showing that Mr. [REDACTED] or any of his businesses have made these progress payments since October 2012. On appeal, counsel has not specifically challenged the director's finding as relating to this issue or provided an explanation regarding the lack of progress payments. As such, the director correctly concluded that the "record is not sufficient to show that a restaurant or food market is currently being constructed or when any such businesses will be completed and open for business."

Furthermore, although the petitioner has provided organizational or staffing charts for both the restaurant and market, and a number of articles on restaurant and market staffing needs, neither business plan includes information relating to a timetable for hiring or the hourly wage each position

will receive. The business plans also lack information relating to processes and suppliers, projections of sales, costs or income. See *Matter of Ho*, 22 I&N Dec. at 213. As such, neither business plan constitutes a comprehensive business plan or shows that [REDACTED] will need no fewer than 10 full-time qualifying employees within two years of the petitioner's filing of the petition. See *Matter of Soffici*, 22 I&N Dec. at 168; 8 C.F.R. § 204.6 (j)4(i)(B).

In light of the above, the petitioner has not demonstrated that his claimed investment has created or will create at least 10 full-time positions for qualifying employees.

#### D. SUMMARY

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.