(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

[redacted]

DATE: FEB 0 1 2013 Office: CALIFORNIA SERVICE CENTER [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:

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 record indicates that the petition is based on an investment in [redacted] which is doing business as [redacted] a franchise in Orlando, Florida. According to the prior counsel's initial letter, dated December 10, 2010, '[redacted] is a well established and respected company that offers superior residential cleaning services." 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 investment in this case is $1,000,000.

The director denied the petition on January 24, 2012, finding that the petitioner had failed to demonstrate that he has placed the required amount of capital at risk for the purpose of generating a return on the capital, and had 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 letter dated February 20, 2012, and the table of contents for prior submissions, but no additional supporting documents. For the reasons discussed below, the petitioner has not overcome either of the director's two grounds of denial. In addition, the evidence in the record fails to demonstrate the lawful source of the petitioner's claimed equity investment. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in her 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. Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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 December 13, 2010, supported by the following types of evidence: (1) corporate documents, (2) a 2000 franchise agreement between and , (3) promotional material, (4) documents showing the petitioner's initial investment in 2000, (5) bank statements for accounts of and the petitioner, and processed checks from account with account number ending in (6) the petitioner's 2006 (7) documents relating to automobile purchasing, financing and registration, (8) insurance policies, (9) a 2005 United States Department of Housing and Urban Development Settlement Agreement, (10) 2008 and 2009 federal tax returns, Internal Revenue Service (IRS) Forms 1120, (11) incomplete copies of the petitioner's 2003 to 2005 federal individual income tax return, IRS Forms 1040, (12) documents relating to workers compensation and employee liability insurance policies, (13) 2006 Transmittal of Wage and Tax Statements, IRS Forms W-3, and (14) other tax related documents.

On August 1, 2011, the director issued a Request for Evidence (RFE), requesting that petitioner provide additional information, including (1) evidence showing that the petitioner has invested or is actively in the process of investing the required amount of capital, and (2) 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 prior counsel's letter, dated October 3, 2011, and a number of documents, most of which the petitioner had previously filed. The additional documents include the following types of evidence: (1) documents relating to the petitioner's 2007 petition, which the director denied on June 17, 2008, (2) 1998 audited financial statements, (3) a June 30, 2000 letter from noting that the petitioner and his wife received £139,446.39 from the sale of their property, (4) bank statements, (5) 2000 to 2010 federal tax returns, IRS Forms 1120, (6) processed checks, (7) documents relating to ongoing business operation, (8) employee information; Forms I-9, Employment Eligibility Verifications; and payroll related documents, (9) revenue reports, (10) tax related documents, and (11) corporate and leasing documents.

On November 9, 2011, the director issued a notice of intent to deny (NOID). In response, the petitioner, through prior counsel, provided a letter dated January 6, 2012, and the following types of documents, most of which the petitioner had previously filed: (1) a copy of certificate of title of a 2005 vehicle, (2) a $420 international money order receipt, (3) a $525 money order receipt, (4) a $103,450 funds transfer receipt and its corresponding order form, (5) a $450 international payment service customer order form, (6) a June 2000 letter from Halifax regarding the petitioner's mortgage, (7) a June 30, 2000 letter from , and (8) vehicle related documents.

In her January 24, 2012 decision denying the petition, the director concluded that the petitioner's evidence failed to show that: (1) the required amount of capital has been placed at risk for the purpose of generating a return, and (2) the claimed equity investment has created or will create at

least 10 full-time positions for qualifying employees. On appeal, the petitioner asserts that the director erred, and files a letter with no additional documents.

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 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 petitioner 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. The full amount of the requisite investment must be made available to the business most closely responsible for creating the employment upon which the petition is based. *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998).

i. Personal Liability

On appeal, the petitioner repeatedly asserts that he has invested the required capital because he "made himself personally liable" to expenses and debts. Similarly, according to section III, "Executive Summary," of an undated business plan, has required capital in the amount of $1,391,707.00 to date[,] all of which has been supplied by [the petitioner] and guaranteed by [his] personal assets. [The petitioner] will use personal assets as collateral as well as all equipment purchased with loan proceeds as collateral, including but not limited to, vehicles, vacuum cleaners, cleaning tools and cleaning solutions." The evidence in the record, including documents relating to vehicle purchases, fails to show that any of the claimed indebtedness was solely secured by assets owned by the petitioner. Moreover, the petitioner's personal guaranty on the new commercial enterprise's liabilities does not transform that liability into the petitioner's capital investment. *Matter of Soffici*, 22 I&N Dec. 158, 162-63 (Assoc. Comm'r 1998). While the petitioner distinguishes *Matter of Ho*, 22 I&N Dec 206 (Assoc. Comm'r 1998) on appeal, he makes no attempt to distinguish *Matter of Soffici*, which expressly deals with personal guaranties. In other words, the petitioner's personal guaranty on debts, primarily secured by the company's assets, is not a qualifying investment. *Matter of Soffici*, 22 I&N Dec. at 162-63. As such, the claimed indebtedness does not meet the definition of capital under the regulation at 8 C.F.R. § 204.6(e), which provides, "[c]apital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided that 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*." (Emphasis added.)

ii. Retention of Proceeds

The regulations specifically state that an investment is a *contribution* of capital, and not simply a failure to remove money from the enterprise. The definition of "invest" in the regulations does not include the reinvestment of proceeds. In addition, 8 C.F.R. § 204.6(j)(2) lists the types of evidence required to demonstrate the necessary investment. The list does not include evidence of the reinvestment of the proceeds of the new enterprise. *See generally De Jong v. INS*, No. 6:94 CV 850 (E.D. Tex. Jan. 17, 1997); and *Matter of Izummi*, 22 I&N at 195 for the propositions that the reinvestment of proceeds cannot be considered capital and that corporate earnings cannot be considered the earnings of the petitioner even if he is a shareholder of the corporation.

In *Kenkhuis v. INS*, No. Civ.A. 301CV2224N, 2003 WL 22124059 (N.D. Tex. Mar. 7, 2003), a case involving a sole proprietorship, the court stated:

> The AAO's construction is consistent with an everyday usage of "invest," meaning to put money or capital into a venture. [Footnote citing Mirriam-Webster Online omitted.] It is also consistent with the legislative history indicating the purpose of the EB-5 program is to encourage infusions of new capital in order to create jobs. The Senate Report on the legislation twice refers to investments of "new capital" that will promote job growth. S. Rep. 55, 101st Cong. 1st Sess. 5, 21 (1989). [Footnote providing some of that report omitted.] The AAO's construction is also consistent with the remarks of Sen. Simon in the floor debate on the statute. [Footnote quoting those remarks omitted.] Finally, as the AAO noted, [the petitioner's] contrary construction would permit the accretion of capital over years; that would be contrary to the legislative intent that the job creation resulting from the infusion of capital take place within a reasonable time, in most cases not longer than six months.

Id. at *4-6.

In this case, the evidence fails to establish that the petitioner has invested $1,000,000 capital in [redacted] According to the undated business plan of "[redacted]" the petitioner "has contributed 100% of his own cash from savings into the business, approximately $104,485.00 for initial investment with a continuing ongoing investment in the amount of $1,391,707.00." The petitioner asserted, through prior counsel's letter dated December 10, 2010 that he invested $1,896,274.27 in [redacted] claiming that the gross income of [redacted] from 2000 to 2009 (purportedly $2,309,032.27) minus the petitioner's gross income from the same period (purportedly $412,758) equals the petitioner's investment in [redacted] Counsel provides no legal authority for this formula. As stated above, an investment is an infusion of new capital, not simply a failure to remove proceeds from the new commercial enterprise. *See Kenkhuis*, 2003 WL 22124059 at *4-6. On appeal, the petitioner asserts that "he has made a total overall investment of $2,442,381.00 in the new commercial enterprise." Specifically, the petitioner

claims that "his investment was made through a combination of cash investment, office equipment, supplies, vehicles, upkeep of cars, insurances, cleaning equipment, office furniture, utilities, property rent, license, legal fees, accountants, advertising, payroll services, taxes and payroll for which he made himself personally liable." The evidence in the record fails to support his claims. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

First, the evidence shows that the petitioner invested only $105,900 in cash into the business. The petitioner has provided the following evidence relating to his cash investment, not all of which documents an investment:

(1) A March 28, 2000 letter from stating that on an unspecified date, he received a deposit from the petitioner in the amount of $2,000,
(2) A June 26, 2000 Customer Order Form receipt, showing that the petitioner wired to $450,
(3) A July 7, 2000 wire transfer receipt, showing that the petitioner wired to $103,450,
(4) An October 2, 2000 international money order receipt, showing that the petitioner paid the American Embassy in an unspecified country $525,[1]
(5) An October 5, 2000 international money order receipt, showing the petitioner paid the American Embassy $420,
(6) An incomplete copy of the petitioner's account statement showing minimal deposits and no debits, with account number ending in , for statement period April 20, 2007 to April 2, 2007, and
(7) An incomplete May 7, 2007 online printout of a bank account, with account number ending in account holder unknown.

The petitioner has not provided any documents showing that the money orders payable to the American Embassy in February and October 2000, respectively, have any connection to his investment in Even assuming that the petitioner spent those funds to apply for his nonimmigrant E-2 Treaty Investor visa that enabled him to begin investing in those funds were not made available for job creation. *Matter of Izummi*, 22 I&N Dec. at 179.

Moreover, the petitioner has not provided any evidence showing that the funds in his personal account with account number ending in totaling $10,000.50 in April 2007, were ever transferred to a account or were used in business operation. Similarly, the evidence fails to show that the funds in the account, with account number ending in totaling $11,573.10 in May 2007, were the petitioner's personal funds or the funds were ever used in business operation. Indeed, it is unclear from the one-page online printout who owned the account, with account number ending in

[1] Although the petitioner claimed, through his former counsel's initial filing dated December 10, 2010, that the receipt is dated February 10, 2000, it is actually dated October 2, 2000, as all other related documents indicate dates in the day-month-year format.

Although the bank statements for the account, with account number ending in show numerous deposits from 2005 to 2007, the petitioner has not provided any evidence relating to the nature of the deposits or evidence showing that the deposits constitute his equity investment. Similarly, documents entitled "Address Book Document" and characterized as "letters" in prior counsel's initial list of exhibits, purportedly show transfers of $3,850 and $2,820 for purchase of business. The company name on the first "letter" is ' ' and the company name on the second "letter" is ' whose owner is ' " The petitioner has failed to show that these documents establish his equity investment in 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). As such, to determine the petitioner's cash investment in the AAO will not consider the funds payable to the American Embassy, which totaled $945, or the funds in the and accounts, which totaled $21,573.15. In other words, the evidence shows that the petitioner's cash investment totaled $105,900.[2]

iii. Non-Cash Investment and Tax Return Evidence

The evidence fails to show that the petitioner's investment, both cash and non-cash investment, amounted to at least $1,000,000. The petitioner has provided the following evidence relating to non-cash investment: (1) documents relating to vehicles, (2) documents relating to business licenses, (3) documents relating to business space rental, and (4) documents relating to promotional and advertising material. None of the evidence shows that the money for the vehicles, license registration fees, business space rental or advertising costs came from the petitioner's personal funds. Rather, the evidence shows that the money came from the funds of doing business as Specifically, although the petitioner has provided a single page incomplete copy of his statement for an account with account number ending in the statement includes no information as to any funds that might have been withdrawn from the petitioner's account to purchase items or pay bills in the benefit of In fact, as explained below, processed checks from account with account number ending in show that the purchases of at least some of the vehicles were with funds of the business.

Specifically, the processed checks show that issued: (1) one check, dated November 2, 2000, payable to cash for in the amount of $10,595.19 and one check, dated November 20, 2000, payable to for $3,004, (2) approximately 20 checks payable to dated from July 2002 to October 2004, (3) approximately 15 checks payable to dated from November 2004 to December 2004, and from January 2006 to August 2006, (4) approximately 80 checks payable to , dated from January 2001 to December 2004, and from January 2006 to November 2006, (5) approximately 70 checks payable to for car payments, dated from January 2001 to November 2004, (6) approximately 30 checks payable to for car payments, dated from July 2001 to December 2004, and (7) approximately 40 checks payable to

[2] $2,000 + $450 + $103,450 = $105,900

dated from December 2000 to December 2004. These documents show that it was , not the petitioner, that purchased at least some of the vehicles, and paid their insurance premiums. Similarly, processed checks further show that not the petitioner, paid the government agencies license registration fees with checks dated from 2000 to 2004, the rental of business space with checks dated from 2000 to 2004, and advertising related costs with checks dated from 2002 to 2004.

In addition, the Florida Vehicle Registrations indicate that some of the vehicles were registered solely under the petitioner's name. For example, the January 2007 registration for a "2004 PONT," the December 2006 registration for a "2006 TOYT," the January 2007 registration for a "2001 DAEW," and the January 2007 registration for a "2000 DAEW" list only the petitioner's name. Similarly, sales contract for a 2003 "GMC ENVOY" and Retail Buyers Order for a 2004 Pontiac Sunfire show the petitioner as the sole purchaser. The petitioner has not provided sufficient evidence showing that he contributed the vehicles to as non-cash investments. For the vehicles that the petitioner and jointly owned, the evidence shows that the lien was secured by the vehicle, partly owned by not secured solely by assets owned by the petitioner. As such, these vehicles do not constitute non-cash investments. *See Matter of Soffici*, 22 I&N Dec. at 162-63.

In the petitioner's initial filing, prior counsel asserted in a letter that the petitioner paid for gasoline, vehicle maintenance, cleaning equipment, and office supplies for The record contains no evidence to support the assertion that the petitioner paid these costs from his personal funds. Indeed, the letter notes repeatedly that these costs were "estimate[s]" and "educated guess[es] by the petitioner" and that there were no receipts available to verify any of the figures. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner's estimates are not adequate support. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

Moreover, although the petitioner asserts that the money used to purchase his home, located at should be considered his investment in , the evidence fails to show that his home address was ever used as 's business office or was ever a property of the business. Specifically, according to May 30, 2000 Articles of Incorporation, the business's principal office was Processed checks and bank statements from 2000 and 2001 show that the business address was Processed checks and bank statements from 2001 to 2002 show that the business address was Processed checks and bank statements from 2003 on show the business address has been Similarly, Forms I-9, Employment Eligibility Verification, dated from 2006 to 2011, indicate that , doing business as, is located at

Furthermore, according to the incomplete IRS Forms 1040, U.S. Individual Income Tax Returns, the petitioner filed from 2003 to 2005, his income ranged from $37,568 to $55,315. The petitioner has also provided an unsigned document entitled "U.S. Department of Housing and Urban Development Settlement Agreement," dated March 30, 2007, showing the petitioner obtained a $152,000 loan. The document, however, indicates that the petitioner did not receive the full loan amount; instead, he received $53,377.52. Neither this loan nor the petitioner's annual income from 2003 to 2005 indicates that he would be able to invest at least $1,000,000 of his personal funds in

Finally, 's IRS Forms 1120, U.S. Corporation Income Tax Returns, from 2000 to 2010 fail to indicate the petitioner's investment was at least $1,000,000. The tax returns from 2000 to 2010 reflect common stock of $500 in every year and fail to indicate that received any additional paid-in capital from the petitioner. Rather, they show that starting from 2000, borrowed from the petitioner. The total amount borrowed was $68,197 in 2000, $78,106 in 2001, $73,090 in 2002, $74,537 in 2003, $82,617 in 2004, $83,212 in 2005, $78,212 in 2006, $166,595 in 2007, $164,436 in 2008, $148,171 in 2009, and $135,868 in 2010. Similar to the evidence discussed above, tax returns fail to support the petitioner's assertion that he has invested at least $1,000,000 in the business. In addition, the IRS Forms 1120 contain inconsistent or missing information. For example, according to the 2000 and 2001 IRS Forms 1120, Schedule K, line 10, there were two shareholders. However, according to line 5 of the same forms, no one shareholder owned 50 percent or more of the voting stock. According to the 2002 through 2007 IRS Forms 1120, Schedule K, line 10, there was one shareholder. However, according to line 5 of the same forms, no one shareholder owned 50 percent or more of the voting stock. The 2009 and 2010 IRS Forms 1120, Schedule K, left blank information relating to the number of shareholders and whether any shareholder owned 50 percent or more of the voting stock. In addition, with the exception of the 2002 IRS Form 1120, the IRS Forms 1120, Schedule E, from 2000 to 2010 fail to indicate that the petitioner received any compensation as an officer of 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 light of the above, although the petitioner has shown a cash investment of $105,900, the petitioner has not demonstrated a qualifying equity investment of $1,000,000 of personal funds.

B. 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, Forms 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 that the need for not fewer than 10 qualifying employees will result within the next two years.

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 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.*, 229 F. Supp. 2d at 1039, *aff'd*, 345 F.3d at 683 (finding this construction not to be an abuse of discretion).

On part 5 of the petition, the petitioner asserts that his investment has created 11 full-time positions for qualifying employees, and that his additional investment will create 9 additional full-time positions. On appeal, the petitioner asserts that "[s]ince its inception, d.b.a. The has created in excess of ten full-time employee positions." The evidence fails to support the petitioner's assertions. First, the tax-related documents fail to show that has created 10 full-time positions for qualifying employees. 2011 Employer's Quarterly Federal Tax Return, Form 941, for January to March shows that 12 employees received wages, tips or other compensation. The Florida Department of Revenue Employer's Quarterly Report for the same period lists 12 employees, including the petitioner. Under the plain language of the regulation at 8 C.F.R. § 204.6(e), the petitioner cannot be counted as an "qualifying employee." Moreover, one employee, received $809.55 in gross wages. A second employee, received a total of $850.02 in gross wages. A third employee, received a total of $938.40 in gross wages. A fourth employee, received a total of $544.20 in gross wages. The Florida minimum wage in the first quarter of 2011 was $7.25 a hour. As such, to be a full-time employee during this period, an individual must have earned approximately $3,299.[3] The evidence fails to show that the four employees were full-time employees. Indeed, as the petitioner has not provided information on how much each employee made per hour or how many hours each employee worked per week, the tax returns fail to show that any of the employees constitute full-time employees. In addition, the petitioner has not provided a Form I-9 for either or

The tax returns for the subsequent quarter have the same deficiencies. Specifically, 2011 Form 941 for April to June shows that 11 employees received wages, tips or other

[3] $7.25/hour × 35 hours/week × 13 weeks = $3,298.75

compensation. The Florida Department of Revenue Employer's Quarterly Report for the same period lists 11 employees, including the petitioner. Under the plain language of the regulation at 8 C.F.R. § 204.6(e), the petitioner cannot be counted as an "qualifying employee." Moreover, one employee, received $297.30 in gross wages. One employee, , received a total of $750.96 in gross wages. The Florida minimum wage was increased to $7.31 per hour on June 1, 2011. As such, to be a full-time employee during this period, an individual must have earned approximately $3,301[4]. The evidence fails to show that the two employees were full-time employees. In fact, as the petitioner has not provided information on how much each employee made per hour or how many hours each employee worked per week, the tax returns fail to show that any of the employees constitute full-time employees.

For the same abovementioned reasons 2009 and 2010 Employer's Quarterly Federal Tax Returns, Forms 941, and their corresponding Florida Department of Revenue Employer's Quarterly Reports, similarly fail to establish that has created at least 10 full-time position for qualifying employees.

In addition, the tax related documents contain discrepancies and inconsistencies. The 2009 Forms 941 for all four quarters show total wages of $142,626.96.[5] The 2009 IRS Form 1120, line 13, however, does not indicate any payment of salaries or wages. The 2009 IRS Form 1120, line 12, shows the compensation of officers as $47,907, and Schedule A, line 3, shows the cost of labor as $107,753. These two amounts total $155,660, which is inconsistent with the total amount listed on the 2009 Forms 941. Also, the 2006 IRS Form W-3,Transmittal of Wage and Tax Statements, shows total wages of $196,359, but the 2006 IRS Form 1120, line 13, shows no salaries or wages. The 2006 IRS Form 1120, line 12, shows compensation of officers as $67,600, and Schedule A, line 3, shows cost of labor as $142,734. These two amounts total $210,334, which is inconsistent with the number listed on the IRS Form W-3. Finally, the 2010 IRS Form 1120 shows $44,074 in officer compensation and $123,456 in cost of labor, totaling $167,530. This total, however, is inconsistent with information contained in the 2010 IRS Form 9040, which shows $139,255.92 paid to all employees. 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. at 591-92. The petitioner has provided no such evidence to explain or reconcile the inconsistent documents.

Second, the processed checks from account with account number ending in fail to indicate that has created at least 10 full-time positions for qualifying employees. Specifically, although the evidence shows that checks were issued to employees or to companies that handled payroll, the petitioner has not provided any evidence relating to the hourly wage of the employees or the hours employees worked weekly. As such, the record contains insufficient evidence showing that any of the employees worked at least 35 hours a week. *See* section 203(b)(5)(D) of the Act.

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[4] $7.25/hour × 35 hours/week × 9 weeks + $7.31/hour × 35 hours/week × 4 weeks = $3,307.15

[5] $41,746.92 + $39,385.08 + $27,430.98 + $34,063.98 = $ 142,626.96

Third, the Forms I-9, Employment Eligibility Verifications, fail to establish that the employees constitute full-time employees. The record contains Forms I-9 and related documents for nine employees, but the record lacks evidence showing that these employees have worked at least 35 hours per week. Forms I-9 verify, at best, that a business has made an effort to ascertain whether particular individuals are authorized to work; they do not verify that those individuals have actually begun working. *Matter of Ho,* 22 I&N Dec. at 212. The petitioner must submit pay statements listing hours worked to establish that the employees work full-time. An August 12, 2011 document, entitled "Employee Payroll Summary," provides a list of employees' names and total pay between November 2000 and July 2006, but lacks information on the employees' hourly wage or the number of hours worked.

Fourth, the insurance-related documents similarly fail to show that has created at least 10 full-time positions for qualifying employees. According to a May 7, 2007 letter from Account Manager of a "Workmen's Compensation Audit reflect[s] payroll for 12 full time employees." The letter, along with its accompanied documents, fails to show that the 12 full-time employees were also "qualifying employees," such that they did not include the petitioner or his family members or individuals who were not eligible to work in the United States. As such, the letter fails to establish that has created at least 10 full-time positions for qualifying employees.

As the evidence does not show that the petitioner's claimed investment has resulted in the creation of at least 10 qualifying 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 Soffici*, 22 I&N Dec. at 168. The comprehensive business plan should "explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions." *Matter of Ho*, 22 I&N Dec. at 213. The record contains an undated business plan for " " that provides no information on staffing requirements. Specifically, although the business plan states that "ultimate goal is to create 20 full-time functioning teams" of cleaning maids, it lacks any discussion on the specific number of full-time employees it has or will need in the future, job descriptions for any full-time positions or a timetable for hiring. *See id.* As such, the business plan does not constitute a comprehensive business plan and does not show that needs or will need no fewer than 10 qualifying employees.

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

C. Source of Funds

The regulation at 8 C.F.R. § 204.6(j)(3) lists the types 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. at 195. 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 show that he has invested or is actively in the process of investing $1,000,000 in Even if the petitioner has established a qualifying equity investment of personal funds, the petitioner has not shown the lawful source of the claimed investment. Specifically, the incomplete copies of the petitioner's 2003 to 2005 U.S. Individual Income Tax Returns, Forms 1040, show his income ranged from $37,568 to $55,315. An unsigned document entitled "U.S. Department of Housing and Urban Development Settlement Agreement," dated March 30, 2007, shows the petitioner secured a $152,000 loan, but received only $53,377.52. Neither his tax returns nor money he received from the 2007 loan establishes that the petitioner could have invested at least $1,000,000 of his personal funds in

Moreover, the evidence relating to the petitioner's bank accounts, which consists of one page of his account statement for an account with account number ending in fails to establish that the petitioner invested at least $1,000,000 in

Finally, although the record contains evidence relating to the sale of the petitioner's property in United Kingdom in June 2000, a June 30, 2000 letter from notes that the petitioner and his wife received £139,446.39, or approximately $211,720 from the sale.[6] This amount is not close to $1,000,000.

In light of the above, the petitioner has not documented the required $1,000,000 equity investment, much less the $2,442,381 he claims to have invested.

IV. 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.

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[6] United States dollar amount calculated using the exchange rate for Thursday, June 29, 2000, at http://www.oanda.com/currency/converter/, accessed on September 28, 2012 and incorporated into the record of proceeding.