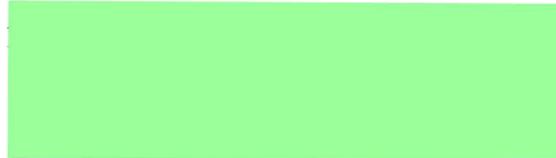


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

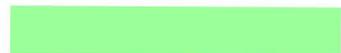


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUN 04 2013 Office: CALIFORNIA SERVICE CENTER

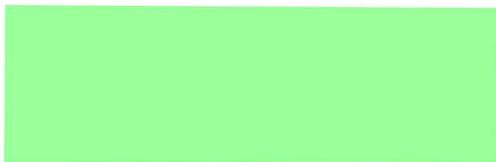


IN RE: Petitioner:



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:



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 a business, [REDACTED] that is not located in a targeted employment area. Thus, the required amount of capital in this case is \$1 million. The petitioner's investment was intended to fund a poultry purchasing and reselling business.

The director determined that the petitioner had provided inconsistent business plans and that the petitioner had failed to demonstrate that she had placed the required amount of capital at risk in the new commercial enterprise. On appeal, counsel asserts that the petitioner made no material change to the business plan of the commercial enterprise, and the petitioner has invested and is in the process of investing the required amount of capital. For the reasons discussed below, the petitioner has not overcome the director's grounds for denial. As additional issues, the petitioner failed to establish that that the petitioner's investment in the new commercial enterprise would create at least 10 new full-time direct positions for qualifying employees or that she had invested capital obtained through lawful means.

## I. THE LAW

Section 203(b)(5)(A) of the Act, as amended by the 21<sup>st</sup> 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 June 7, 2011, and indicated in part 3 of the petition that [REDACTED] is a "Buy/Sell poultry prod" business. The petitioner indicated that she made an initial investment of \$1,400,075 on May 12, 2011. In part 5 of the petition, the petitioner indicated that there were no employees when she made her initial investment, there were two employees at the time she filed her petition, and there would be 10 additional jobs created by her additional investment. In part 6 of the petition, the petitioner indicated that her duties and responsibilities would be the "[d]ay to day

management and policy formulation of the purchase, sale, and shipment of poultry, beef and pork products from [the] U.S. to China.”

On January 6, 2012 the director issued a request for additional evidence relating to (1) the required amount of capital investment in [redacted] and whether those funds were placed at risk, (2) the lawful source of the invested funds, and (3) the creation of not fewer than 10 full-time positions for qualifying United States employees. The director advised that if the requisite number of positions were not created at the time of the filing of the petition, the petitioner must submit a comprehensive business plan.

In response, counsel asserted that “after the [petitioner] began her venture in Chicago, Illinois under [redacted], she came upon a business opportunity to bid on a poultry, beef and pork processing facility in [redacted]. Counsel claimed that the petitioner had invested over \$2,160,000 in [redacted] and \$1,000,000 in [redacted]. Furthermore, counsel claimed that the [redacted] employed a combined full-time staff of seven and a seasonal and part-time staff of 73.

In the director’s decision denying the petition, the director determined that the petitioner’s venture with [redacted] was inconsistent with the original business plan. Moreover, the director determined that the petitioner failed to demonstrate that her capital investment was placed at risk in [redacted].

### III. ISSUES ON APPEAL

#### A. The New Commercial Enterprise

At the outset, it is necessary to define the parameters of the new commercial enterprise. At the initial filing of the petition, the petitioner submitted a letter claiming that [redacted] is “a poultry and meat trading enterprise.” The petitioner did not mention or submit any documentary evidence regarding [redacted] or the petitioner’s involvement with [redacted]. In fact, the petitioner claimed that [redacted] would purchase poultry and beef from slaughterhouses in the United States and export them to China. In its business plan, the petitioner submitted a list of three U.S. suppliers that it claimed it would use to obtain meat products, and explained that the proposed duties of its five sales employees would revolve around meeting with U.S. slaughterhouses and processors, developing a sales and buying program, and exploring and locating potential processors.

In response to the director’s request for evidence, the petitioner claimed that [redacted] would also be involved in poultry processing at [redacted]. Moreover, the petitioner submitted an “Operating Agreement” dated June 2, 2011 reflecting that [redacted] made a \$1,000 capital contribution and possessed 51% of the shares and the petitioner made a \$1,000 capital contribution and possessed 49% of the shares. Further, the petitioner submitted a “Unit Register” for [redacted] reflecting that on June 2, 2011, [redacted] purchased 510 shares and [redacted] purchased 490 shares, and on February 13, 2012, [redacted] transferred 20 shares resulting in 510 shares for [redacted] and 490 shares for [redacted].

The petitioner’s current plans are inconsistent with the original business plan. The petitioner must demonstrate eligibility as of the date of filing the petition. See 8 C.F.R. § 103.2(b)(12); *Matter of*

*Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). See also *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981)).

Regardless, the regulation at 8 C.F.R. § 204.6(e) provides that the definition of a commercial enterprise “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 [emphasis added].” As [REDACTED] has been *partially-owned* by [REDACTED] and [REDACTED] since the filing date of the petition and [REDACTED] now owns 51% of [REDACTED] while [REDACTED] owns 49%, [REDACTED] partial ownership of [REDACTED] does not qualify [REDACTED] as a “wholly-owned” subsidiary of [REDACTED] pursuant to the regulation at 8 C.F.R. § 204.6(e). As [REDACTED] does not qualify as part of the new commercial enterprise, any investment into and job creation at [REDACTED] is not relevant to this petition.

#### B. Capital at Risk

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 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.

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. at 179. In this matter, that entity is [REDACTED], not [REDACTED].

Although the petitioner submitted documentary evidence demonstrating that she deposited \$1,400,075 into [REDACTED] bank account, the petitioner failed to establish that at least \$1,000,000 of her investment was placed at risk in the new commercial enterprise as of the date of filing the petition. The petitioner submitted a Form I-9, Employment Eligibility Verification, for [REDACTED] signed by the petitioner as president of [REDACTED] on May 31, 2011, but failed to submit any documentary evidence demonstrating that [REDACTED] was actually employed by [REDACTED] and earned a salary. In response to the director's request for evidence, the petitioner submitted a letter dated June 15, 2011 from [REDACTED], in which she declined a position with [REDACTED]. Furthermore, the petitioner claimed that she would purchase poultry products from [REDACTED] and [REDACTED] and submitted screenshots regarding the following purported suppliers of [REDACTED] and [REDACTED]. She failed, however, to submit any documentary evidence reflecting that she actually purchased products from those entities.

Moreover, the petitioner submitted a lease between [REDACTED] for [REDACTED] for May 1, 2011 to April 30, 2016 for use as a “dwelling unit” requiring monthly payments of \$1,500, and an invoice dated May 25, 2011, from [REDACTED] for telephone installation service for \$285.00. Before it can be said that capital made available to a

commercial enterprise has been placed at risk, a petitioner must present some evidence of the actual undertaking of business activity; otherwise, no assurance exists that the funds will in fact be used to carry out the business of the commercial enterprise. This petitioner's de minimis action of signing a lease agreement, without more, is not enough. *Matter of Ho*, 22 I&N Dec. 206, 210 (Assoc. Comm'r 1998). Moreover, the record does not resolve the inconsistency between the petitioner's claim that this address will be the location of the business and the fact that the lease states that the premises are leased for the purpose of "a dwelling unit." The petitioner did not demonstrate at the time of the filing of her petition, June 7, 2011, that she had placed her capital at risk in [REDACTED] through any undertaking of actual business activities beyond signing a lease for a dwelling unit and securing telephone service.

In response to the director's request for evidence, the petitioner submitted [REDACTED] financial statements reflecting that as of December 31, 2011, [REDACTED] had \$2,428,000 in assets that included \$105,500 in cash, \$5,000 in a security deposit, \$1,317,500 in notes receivable from [REDACTED] and \$1,000,000 in an investment in [REDACTED]. Moreover, [REDACTED] had \$2,428,000 in liabilities and capital that included \$1,039 in payroll tax, \$1,411,174 in loans from shareholder (the petitioner), \$23,409 in customer deposits, \$1,000 in capital stock, \$999,000 in paid-in capital, and a loss of \$7,623 in retained earnings. The financial statements claimed that [REDACTED] expenses included \$9,000 in rental expenses, \$1,967 in phone and internet, \$6,417 in payroll and related taxes, \$18,767 in freight, and \$45 in miscellaneous expenses for a total of \$36,195. None of this evidence reflects any undertaking of actual business activity as of the date of filing the petition, June 7, 2011.

Although the petitioner initially deposited \$1,400,705 with [REDACTED] on May 11, 2011 and then deposited another \$760,000 with [REDACTED] on June 9, 2012, the financial statements do not demonstrate that the petitioner had placed her capital at risk in [REDACTED] as of the date of filing, June 7, 2011, the date as of which the petitioner must establish her eligibility. 8 C.F.R. § 103.2(b)(12). Even as of December 31, 2011, according to the financial statements, [REDACTED] had only accumulated expenses of \$36,195. The petitioner did not establish that her capital has been placed at risk in [REDACTED]. In fact, the financial statements indicate that the petitioner's capital was used for an investment in [REDACTED] rather than [REDACTED] including \$1,317,500 in notes receivable and \$1,000,000 for an investment in [REDACTED]. As discussed above, as [REDACTED] is not a wholly owned subsidiary of [REDACTED] is not part of the new commercial enterprise. 8 C.F.R. § 204.6(e)(definition of commercial enterprise). Thus, the funds made available to [REDACTED] have not been 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. at 179.

Furthermore, while the December 31, 2011 balance sheet reflects that [REDACTED] has \$1,000 in stock and \$999,000 in additional paid-in capital, the financial statements also reflect loans in the amount of \$1,411,174 from the shareholder, who is the petitioner. The total of loans and capital is \$2,411,174. The petitioner, however, has only documented a transfer of \$2,160,000 from her accounts to [REDACTED]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the

visa petition. *Id.* If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Regardless, the regulation at 8 C.F.R. § 204.6(e) provides that “a contribution of capital in exchange for a note” is not a qualifying contribution of capital. As such, the petitioner failed to establish that her loan of \$1,411,174 can be included as part of her investment in [REDACTED]

Even considering the post-filing invoices, the petitioner submitted several invoices from [REDACTED]. However, these invoices were charged to [REDACTED] rather than [REDACTED] and therefore do not demonstrate expenses incurred by [REDACTED]. Furthermore, the petitioner submitted an invoice from [REDACTED] located at [REDACTED] for \$19,705. The record is unclear as to why an arts and crafts import/export company would purchase 54 pork back bone at a price of \$12,960. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d at 1220; *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. at 10; *Systronics Corp. v. INS*, 153 F. Supp. 2d at 15.

On appeal, counsel claims that the petitioner's contractual obligations “with three customers in China to deliver poultry and pork products for a period of time” demonstrates that she placed her capital at risk in [REDACTED]. Counsel submitted documentation that was previously submitted and additional documentation. The petitioner submitted purchase contracts with [REDACTED] reflecting a shipment period from July 1, 2011 to August 30, 2012, for \$12,000,000 of frozen pork byproduct, and a shipment period of June 1, 2012 to May 31, 2013, for \$2,250,000 of frozen spent hen. [REDACTED] address is the same address [REDACTED] the arts and craft business. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d at 1220; *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. at 10; *Systronics Corp. v. INS*, 153 F. Supp. 2d at 15.

Nonetheless, the petitioner also submitted a purchase contract with [REDACTED] reflecting a shipment period from June 1, 2012 to May 31, 2013, for \$2,000,000 of frozen spent hen. On appeal, counsel refers to two transactions on a previously

submitted [redacted] Chase Bank statement [redacted] reflecting that on August 17, 2011, [redacted] transferred \$550,442.50, and [redacted] transferred \$460,656.60. Counsel claims that “[i]t is customary for customers to pre-pay or make a deposit on the amount in the continuous Purchase Orders to [redacted] to deliver to its customers on demand basis with the specified quantity and quality of products.” However, counsel failed to submit any documentary evidence to support his assertions. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984). The documentary evidence does not indicate that [redacted] would come close to fulfilling the first contractual obligation of providing \$12,000,000 of frozen pork byproduct by August 30, 2012. Again, the petitioner submitted only one invoice indicating that [redacted] purchased \$12,960 of pork back bone. While the petitioner submitted several invoices reflecting approximately \$112,640 of [redacted] purchases from [redacted], the petitioner failed to demonstrate that those purchases were resold to [redacted] or even [redacted]. Although the invoices from [redacted] indicate the port of destination, they do not indicate the receiver of the goods. Even if the \$112,640 of pork products were resold to [redacted], the purchase contract indicates that [redacted] would purchase \$12,000,000 of pork products from [redacted].

Finally, even though the petitioner claims to be doing business with three foreign entities in China, they appear to be the same entity. For example, the fax numbers listed on the purchase contracts for [redacted] are the same even though different addresses are listed. Further, [redacted] August 1, 2011 invoice shows that it is located at the same business address listed on [redacted] October 10, 2011 invoice.

A review of the Chase bank statement [redacted] referenced by counsel indicates that while there were two deposits from [redacted] on August 17, 2011, totaling \$1,011,099.10, there was also a transfer of \$1,000,000 on August 26, 2011, to account [redacted] which is [redacted] account. [redacted], however, is not part of the new commercial enterprise. The petitioner failed to explain how the transfer of money from [redacted] placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk in [redacted].

On appeal counsel refers to a contract dated June 10, 2011 between [redacted] in which [redacted] pre-purchased \$1,355,000 of chickens that would be delivered from June 1, 2012 to December 31, 2012. [redacted] balance sheet as of December 31, 2011, however, characterizes the payments to [redacted] as a loan and an investment and does not list any accounts receivable. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d at 1220; *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. at 10; *Systronics Corp. v. INS*, 153 F. Supp. 2d at 15.

For the reasons discussed above, the petitioner failed to submit relevant, probative and credible evidence establishing that she had actually placed the required amount of capital at risk in the new commercial enterprise as of the date of filing the petition pursuant to the regulation at 8 C.F.R. § 204.6(j)(2).

### C. Job 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 ten (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 ten qualifying employees.

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. 206, 213 (Assoc. Comm'r 1998). 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.*

In part 5 of the petition, the petitioner indicated that there were two full-time employees at the time she filed her petition. However, the petitioner submitted only one Form I-9 for [REDACTED]. The petitioner failed to submit any evidence that [REDACTED] employed another individual as claimed on her petition. It is noted that pursuant to the regulation at 8 C.F.R. 204.6(a) a qualifying employee "does not include the alien entrepreneur, the alien entrepreneur's spouse, sons, or daughters, or any nonimmigrant alien."

In the petitioner's business plan, the petitioner claimed that her investment in [REDACTED] would create the following positions:

1. President and Chief Executive Officer that would be occupied by the petitioner.
2. General Manager and Vice President that was currently occupied by [REDACTED]
3. Sales Manager.
4. Three to Four Sales Staff.
5. Logistics Manager.
6. Account Manager.

The petitioner's business plan did not claim that her investment in [REDACTED] would create at least ten full-time positions for qualifying employees. Even assuming that there would be four sales staff, the petitioner's investment would create only eight positions for individuals other than the petitioner. Furthermore, while the business plan gave brief position descriptions, it failed to provide specific information such as projected salary and the need for such positions. To be "comprehensive," a business plan must be sufficiently detailed to permit USCIS to draw reasonable inferences about the job-creation potential. Mere conclusory assertions do not enable USCIS to determine whether the job-creation projections are any more reliable than hopeful speculation. *Matter of Ho*, 22 I&N Dec. at 213.

In the director's request for evidence, the director notified the petitioner of the deficiencies and requested additional evidence. The director stated:

The [business] plan must fully explain the staffing requirements and the need for the stated number of employees. The submitted plan states that the business may hire four salespeople. Therefore you must fully explain the need for the stated number of sales representatives, a complete job description, the experience required and a timetable for hiring.

In response to the director's request for evidence, the petitioner provided a business plan that did not include the requested information relating to future employment at [REDACTED]. Even with respect to [REDACTED] the petitioner provided only a personnel forecast with job titles for 11 of the 111 employees. Moreover, the petitioner submitted a letter from [REDACTED] informing [REDACTED] that she could not accept a position. The petitioner also submitted a Form I-9 for [REDACTED] along with unendorsed checks from [REDACTED]. Furthermore, the petitioner submitted documentary evidence regarding employees at [REDACTED] including 70 Form I-9s with the majority of them reflecting [REDACTED] crossed-out and [REDACTED] handwritten in its place. Again, as [REDACTED] is not a wholly-owned subsidiary of [REDACTED] as required pursuant to the regulation at 8 C.F.R. § 204.6(e), any purported employment by [REDACTED] will not be considered as evidence of job creation for [REDACTED]. It is noted that the employees at [REDACTED] appear to be seasonal or part-time, and therefore would not meet the definition of full-time employment at the regulation at 8 C.F.R. § 204.6(a). The petitioner failed to demonstrate that any of positions at [REDACTED] were created as a result of the petitioner's investment or whether the positions previously existed. The petitioner has not claimed or documented that [REDACTED] was a troubled business, thus, the petitioner must document the creation of 10 new jobs. See *Matter of Soffici*, 22 I&N Dec. 158, 167-68 (Assoc. Comm'r 1998); *Matter of Hsiung*, 22 I&N Dec. 201, 204-05 (Assoc. Comm'r 1998).

On appeal, the petitioner submitted endorsed checks from [REDACTED] and employer quarterly income tax returns reflecting [REDACTED] as the sole employee of [REDACTED]. The documentation submitted on appeal does not overcome the deficiencies outlined in the director's request for evidence.

For the reasons stated above, the petitioner failed to establish that [REDACTED] has hired at least ten qualifying employees or that [REDACTED] will create not fewer than ten full-time positions for qualifying employees pursuant to the regulation at 8 C.F.R. § 204.6(j)(4).

C. Lawful Source of Funds

As an additional issue, the petitioner has not submitted relevant, probative and credible evidence establishing the lawful source of her invested funds. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> 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).

A petitioner must provide evidence that the capital the alien has invested, or is actively in the process of investing, was obtained through lawful means. 8 C.F.R. § 204.6(j). 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. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). These "hypertechnical" requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Calif. 2001) *aff'd* 345 F.3d 683 (9<sup>th</sup> Cir. 2003) (affirming a finding that a petitioner had failed to establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. *Matter of Ho*, 22 I&N Dec. at 210-211; *Matter of Izummi*, 22 I&N Dec. at 195. Without documentation of the path of the funds, the petitioner cannot meet her burden of establishing that the funds are her own funds. *Id.*

The petitioner asserts that the source of funds is her husband, [REDACTED]. The petitioner submitted evidence that [REDACTED] maintained several accounts in the aggregate of \$1,475,080.83.

The petitioner submitted a "Personal Certificate of Deposit" from the [REDACTED] Bank of China reflecting that [REDACTED] maintained the following balances:

YEAR	RMB	U.S. DOLLAR <sup>1</sup>
2005	32,685,126	4,051,690
2006	26,845,986	3,442,900

<sup>1</sup> U.S. dollar conversion based on the last trading day of the respective year. See [www.oanda.com](http://www.oanda.com); accessed on May 14, 2013, and incorporated into the record of proceeding.

2007	36,255,126	4,970,470
2008	17,858,556	2,619,590
2009	41,586,532	6,100,240
2010	12,658,936	1,920,410
2011	15,235,855	2,398,480

In addition, the petitioner submitted [REDACTED]'s "Shareholders Meeting Resolution" and [REDACTED] China income tax documentation reflecting [REDACTED] dividend earnings, salary, and tax withholdings in RMB:

YEAR	DIVIDEND	SALARY	DIVIDEND TAX	SALARY TAX	NET DIVIDEND	NET SALARY	TOTAL NET
2001	725,000	72,500	145,000	18,559	580,000	53,941	633,941
2002	2,400,000	95,000	480,000	27,121	1,920,000	67,879	1,987,879
2003	3,700,000	105,000	740,000	31,308	2,960,000	73,692	3,033,682
2004	3,750,000	112,500	750,000	34,530	3,000,000	77,970	3,077,970
2005	6,035,000	125,000	1,207,000	40,155	4,828,000	84,845	4,912,845
2006	7,125,343	95,000	1,425,068	26,100	5,700,275	68,900	5,769,175
2007	3,101,044	83,000	620,207	21,340	2,480,837	61,660	2,542,497
2008	605,158	78,500	121,032	19,625	484,126	58,875	543,001
2009	125,666	75,000	25,133	18,397	100,533	56,603	157,136
2010	375,512	75,000	75,103	18,392	300,409	56,608	357,017

Conversion to the U.S. dollar reflects the following:

YEAR	DIVIDEND	SALARY	DIVIDEND TAX	SALARY TAX	NET DIVIDEND	NET SALARY	TOTAL NET
2001	87,588	8,759	17,518	2,242	70,070	6,517	76,587
2002	290,321	11,492	58,064	3,281	232,257	8,211	240,468
2003	447,557	12,701	89,511	3,787	358,046	8,914	366,960
2004	453,627	13,609	90,725	4,177	362,902	9,432	372,334
2005	730,055	15,121	146,011	4,858	584,044	10,263	594,307
2006	882,778	11,770	176,556	3,234	706,222	8,536	714,758
2007	397,697	10,644	79,539	2,737	318,158	7,907	326,065
2008	82,965	10,762	16,593	2,691	66,372	8,071	74,443
2009	18,444	11,008	3,689	2,700	14,755	8,308	23,063
2010	55,005	10,986	11,001	2,694	44,004	8,292	52,296

[REDACTED] yearly salary and dividend earnings do not correspond with the balances in his [REDACTED] Bank of China [REDACTED]. For example, from 2008 to 2010 [REDACTED] dividend earnings were \$82,965, \$18,444, and \$55,005 respectively, and his salary earnings were \$10,762, \$11,008, and \$10,986 respectively; yet his account balances in those same years were \$2,619,590, \$6,100,240, and \$1,920,410 respectively. [REDACTED] combined earnings of

\$29,452 in 2009 do not explain the balance increase from \$2,619,590 in 2008 to \$6,100,240 in 2009, a difference of \$3,480,650. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d at 1220; *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. at 10; *Systronics Corp. v. INS*, 153 F. Supp. 2d at 15. Without evidence documenting the path of [REDACTED] transactions and deposits into his bank accounts, the petitioner failed to demonstrate the lawful source of funds.

For the reasons discussed above, the petitioner failed to establish that her capital was obtained through lawful means pursuant to the regulation at 8 C.F.R. § 204.6(j)(3).

#### 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.