

(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: **MAY 07 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 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,

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the preference visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment creation alien pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5). The petition is based on an investment in [REDACTED] a business located in National City, California. According to its three business plans, [REDACTED] “engage[s] in distributing uncooked and cooked tortilla, flatbread and related products to wholesale distributors, retailers, and end users.” 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 her September 5, 2012 decision, the director denied the petition, finding that the petitioner failed to demonstrate that his claimed investment has created or will create at least 10 full-time positions for qualified employees. For the reasons discussed below, the AAO will dismiss the petitioner’s appeal, affirming the director’s ground for denial. Moreover, the petitioner has failed to demonstrate the lawful source of his funds and has failed to show that he has placed the full amount of the claimed equity investment at risk.

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).

Section 11036(a)(1)(B) of the public law eliminates the requirement that the alien personally establish the new commercial enterprise. As the petitioner filed the petition after the effective date of the public law in 2002, the petitioner need not demonstrate that he personally established a new commercial enterprise. The issue of whether the petitioner purchased a preexisting business is still relevant, however, as a petitioner must still demonstrate the creation of 10 new jobs.

II. PROCEDURAL AND FACTUAL BACKGROUND

The petitioner filed the petition on March 12, 2012, supported by the following evidence:
(1) [REDACTED]’s corporate documents, including documents filed with the Secretary of State of

the State of California; (2) [REDACTED] 2012 business plan; (3) an October 19, 2011 [REDACTED] Telegraphic Transfer/Interbank Fund Transfer Application Form, and a related document entitled “Branch Copy of Customer’s Advice”; (4) [REDACTED] October 2011 and December 2011 bank statement for an account ending in 0909; (5) a two-year Standard Industrial Lease between [REDACTED] and [REDACTED] signed in December 2011; (6) a [REDACTED] License Application and application payment receipt, dated January 30, 2012; (7) [REDACTED] 2011 unaudited financial statements; (8) bills and invoices relating to [REDACTED] business operation; (9) a January 5, 2012 Distributor Agreement between [REDACTED] and [REDACTED] (10) an uncertified translation entitled “Sales Contract of House in Stock”; (11) an uncertified translation entitled “Personal Financial Situation Statement”; (12) an uncertified translation entitled “Statement of Account Transaction History (Oct. 1st, 2011 – October 18th, 2011),” for the petitioner’s account ending in [REDACTED] (13) an October 19, 2011 [REDACTED] Limited Integrated Account Portfolio Summary for the petitioner’s account ending in 0888; (14) uncertified translations for documents relating to [REDACTED] (15) [REDACTED] 2008 through 2010 audited financial statements; (16) an uncertified translation entitled “Agreement for Investment as Shares”; (17) documents relating to property described as ‘ [REDACTED] [REDACTED] ’ and ‘ [REDACTED] [REDACTED] ’ in China; (18) an undated document entitled “Employment Organizational Chart”; (19) documents relating to [REDACTED] employees, including Employment Eligibility Verifications, Forms I-9; and (20) documentation relating to the designation of targeted employment areas in California.

On April 10, 2012, the director issued a Request for Evidence (RFE), requesting that the petitioner provide additional information, including evidence showing (1) the lawful source of the petitioner’s funds; (2) that the claimed equity investment has created or will create at least 10 full-time positions for qualifying employees; and (3) that the claimed equity investment was made in a targeted employment area.

On July 2, 2012, the petitioner responded to the director’s RFE with a June 28, 2012 letter from counsel, and a number of documents, some of which the petitioner had previously filed. The response includes the following evidence: (1) an uncertified translation entitled “Sales Contract of House in Stock,” relating to real property located in China; (2) a January 5, 2011 Settlement of Business Application; (3) a March 7, 2011 Settlement of Business Application; (4) a document entitled “Account History: Detailed Transactions [REDACTED]” relating to the petitioner’s account ending in [REDACTED]; (5) documents entitled “Wire Transfer Delegation Agreement” and related documents, showing 17 individuals wire transferred funds to the petitioner’s [REDACTED] bank account ending in [REDACTED] in September 2011; (6) a document entitled “Account History: Detailed Transactions [REDACTED]”, relating to the petitioner’s account ending in [REDACTED] (7) the petitioner’s August 2011 through September 2011 bank statement for an account ending in [REDACTED] (8) an October 19, 2011 [REDACTED] Bank Telegraphic Transfer/Interbank Fund Transfer Application Form, and a related document entitled “Branch Copy of Customer’s Advice”; (9) a document entitled “Demographic Basic Information Inquiry”; (10) documents relating to [REDACTED] employees, including Employment Eligibility Verifications, Forms I-9; (11) [REDACTED] January 2012 through March 2012 Employer’s Quarterly Federal Tax Return, IRS Form 941; (12) [REDACTED]

revised June 2012 business plan; and (13) an April 30, 2012 letter from California's Business, Transportation and Housing Agency, relating to targeted employment areas in California.

In her September 5, 2012 decision denying the petition, the director concluded the petitioner's evidence failed to show that the claimed equity investment has created or will create at least 10 full time positions for qualifying employees. On appeal, counsel files a brief and a number of documents, some of which the petitioner had previously filed. The evidence filed on appeal includes: (1) documents relating to [REDACTED] employees, including Employment Eligibility Verifications, Forms I-9; (2) [REDACTED] July 2012 through September 2012 Employer's Quarterly Federal Tax Return, IRS Form 941; (3) documents relating to [REDACTED] payments of insurance and taxes in September 2012; (4) payroll documents for the pay period of September 26, 2012 through October 10, 2012; (5) a car rental related document from [REDACTED] revised October 2012 business plan; and (7) color photographs purportedly of [REDACTED] employees and business operation. For the reasons discussed below, the AAO will dismiss the petitioner's appeal.

III. ISSUES ON APPEAL

A. Employment Creation

The regulation at 8 C.F.R. § 204.6(j)(4)(i) lists the evidence that a petitioner must submit to document employment creation, including photocopies of relevant tax records, 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 the need for not fewer than 10 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.*

The regulation at 8 C.F.R. § 204.6(e) defines "employee" as an individual who provides services directly to the new commercial enterprise and excludes independent contractors. The same regulation defines "qualifying employee" as "a United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States." The definition excludes the petitioner, the petitioner's spouse, sons, or daughters, or any nonimmigrant alien. Section 203(b)(5)(D) of the Act, as amended, now defines "full-time employment" as "employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position." Full-time employment also means continuous, permanent employment. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1039 (E.D. Ca. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (finding this construction not to be an abuse of discretion).

According to part 5 of the petition, at the time of filing, [REDACTED] had four full-time employees. The petitioner stated on the petition that “6 or more” new full-time employees will be created by his additional investment. On appeal, counsel asserts that [REDACTED] currently has “six (6) full-time and six (6) part-time employees (equivalent to nine (9) full-time employees).” The evidence in the record, however, does not support counsel’s assertion that the petitioner’s investment has created the equivalent of nine full-time positions. The record includes a number of Employment Eligibility Verifications, Forms I-9, and documents relating to individuals’ immigration status. These documents, specifically the Forms I-9, are not evidence that [REDACTED] is currently employing the individuals on the forms or that they work full-time. *Matter of Ho*, 22 I&N Dec. at 212. Instead, these documents relate to the employment eligibility of the individuals who sought employment, either as full-time or part-time employees.

[REDACTED] Employer’s Quarterly Federal Tax Returns, IRS Forms 941, show that between January 2012 and March 2012, [REDACTED] had four employees, and between July 2012 and September 2012, it had 12 employees. [REDACTED] payroll documents relating to the pay period of September 26, 2012 through October 10, 2012 show 12 employees worked between 28.25 and 86.35 hours during the two-week period, with seven of them working full-time or at least 35 hours per week. The petitioner has not provided any evidence showing that the remaining five employees constituted employees who shared full-time positions. Specifically, the plain language of the regulation at 8 C.F.R. § 204.6(e) provides that “[a] job-sharing arrangement whereby two or more qualifying employees share a full-time position shall count as full-time employment provided the hourly requirement per week is met. This definition shall not include combinations of part-time positions even if, when combined, such positions meet the hourly requirement per week.” As the petitioner has not provided any evidence showing that these five part-time employees were part of any job-sharing arrangements, the petitioner has failed to show that the five part-time employees share full-time positions such that United States Citizenship and Immigration Services (USCIS) can count their employment as full-time.

As the evidence does not show that the petitioner’s claimed equity 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. 158, 168 (BIA 1998). 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. In this case, the record contains three business plans. The petitioner initially filed the first plan in support of the petition. The petitioner filed the second plan in response to the director’s RFE, in which the director requested “[a] copy of a comprehensive business plan showing that, due to the nature and projected size of [REDACTED] the need of at least 10 qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.” The petitioner filed the third and final business plan on appeal.

[REDACTED] first business plan fails to show [REDACTED] need for at least 10 full-time, qualifying employees. Pages 14 to 17 of the business plan indicate that [REDACTED] will have the following 11 employees by June 2013, including (1) [REDACTED] president – who is the

petitioner, (2) a secretary to the president to be hired in May 2012, (3) an operations manager, (4) a sales manager to be hired in August 2012, (5) a marketing representative, (6) a customer relations worker to be hired in March 2013, (7) an accountant to be hired in January 2013, (8) a purchaser – who was [REDACTED] (9) two warehouse workers – one of whom was [REDACTED] the other one to be hired in June 2013, and (10) a shipping worker to be hired in October 2012. First, the petitioner is not a qualifying employee. See 8 C.F.R. § 204.6(e). Second, the petitioner has failed to show that [REDACTED] was/is a full-time employee. The petitioner has provided [REDACTED] January 2012 through March 2012 Employer’s Quarterly Federal Tax Return, IRS Form 941, which shows that for the entire quarter, [REDACTED] earned a total of \$803.17. Assuming *arguendo* that [REDACTED] hourly wage was at least \$8.00, which was California’s minimum wage, [REDACTED] income signifies that during the entire quarter, he worked no more than 100.4 hours. Thus, [REDACTED] had insufficient wages to account for full-time employment over the 13 weeks in the quarter.¹ As such, the petitioner has failed to show that the position [REDACTED] held was/is a full-time position. Third, the petitioner has failed to show that [REDACTED] was/is a full-time employee. The record contains [REDACTED] identification card, indicating that [REDACTED] was a high school student from 2010 to 2011. Moreover, neither [REDACTED] January 2012 through March 2012 nor its July 2012 through September 2012 Employer’s Quarterly Federal Tax Return, IRS Form 941, lists [REDACTED] as a [REDACTED] employee. [REDACTED] payroll documents for the pay period of September 26, 2012 through October 10, 2012 similarly fail to show that [REDACTED] was a [REDACTED] employee. As such, the petitioner has failed to show that the position [REDACTED] purportedly held was/is a full-time position. Fourth, page 5 of this business plan notes that [REDACTED] is in the business of tortilla manufacturing. Tortilla manufacturing, however, is not one of the permissible uses of the facilities under the two-year Standard Industrial Lease between [REDACTED] signed in December 2011. At most, the first business plan establishes [REDACTED] need for eight, not 10, full-time qualifying employees – two current full-time qualifying employees and six qualifying employees to be hired between May 2012 and June 2013

Similarly, [REDACTED] second business plan fails to show the need for not fewer than 10 qualifying employees. Specifically, according to page 3 of the second business plan, [REDACTED] “currently employs six (6) full[-]time employees. According to the development and growth of the [c]ompany, two (2) additional full[-]time employees will be hired before December 2012 and another two (2) full[-]time employees will be hired before the end of April 2013.” Pages 13 to 17 of the second business plan provide that the six current full-time employees are: (1) [REDACTED] president – who is the petitioner, (2) an operations manager, (3) a marketing representative, (4) a purchaser, (5) a warehouse worker, and (6) a delivery truck driver. One of these six employees – the petitioner – does not constitute a qualifying employee, as defined under section 203(b)(5)(D) of the Act or the regulation at 8 C.F.R. § 204.6(e). As such, according to this business plan, [REDACTED] had five, not six, qualifying full-time employees. The second business plan also provides that [REDACTED] will hire the following workers on the following dates: (1) a shipping worker in October 2012, (2) a sales manager in December 2012, (3) an accountant in February 2013, and (4) a

¹ The information relating to California’s minimum wage was obtained from http://www.dir.ca.gov/dlse/FAQ_MinimumWage.htm, accessed on February 19, 2013, and incorporated into the record of proceeding.

customer relations worker in April 2013. In short, at most, the second business plan establishes need for nine, not ten, full-time qualifying employees – five current full-time qualifying employees and four qualifying employees to be hired between October 2012 and April 2013.

third business plan fails to show need for not fewer than 10 qualifying employees. At most, pages 14 through 16 of the business plan show need for eight full-time employees, including the petitioner. As the petitioner does not qualify as a qualifying employee, the business plan shows the need for seven full-time employees: (1) an operations manager, (2) a warehouse manager, (3) two sales representatives, (4) and three delivery truck drivers. The organization chart on page 16 indicates that the two accounting employees, two delivery truck drivers and two warehouse workers are part-time employees. As the petitioner has not provided any evidence showing that these part-time employees share full-time positions such that USCIS can count them as full-time employment, they do not constitute full-time qualifying employees.

Furthermore, the petitioner has failed to explain need for five delivery truck drivers (three full-time drivers and two part-time drivers), as provided in the third business plan, rather than one delivery truck driver as provided in the second business plan. The petitioner has provided insufficient evidence, such as financial statements or documents showing a dramatic increase in business operations, justifying this increase in need for delivery truck drivers. Nor has the petitioner provided sufficient evidence justifying the increase in need for accounting employees from the second business plan to the third business plan. Additionally, according to the two-year Standard Industrial Lease between and signed in December 2011, the permitted use of the facilities was “storage of non-perishable food items and a delivery truck and for no other use.” According to page 1 of the business plan, “engage[s] in distributing uncooked and cooked tortilla, flatbread and related products to wholesale distributors, retailers, and end users.” According to page 8 of the business plan, “[s]light adjustments in the formulation will [] allow the company to make a variety of uncooked flat breads for different markets.” The petitioner has not provided any evidence showing that “uncooked and cooked tortilla, flatbread and related products” constitute “non-perishable food items” or any evidence showing that may “make a variety of uncooked flat breads” under the two-year lease. The petitioner has also failed to provide any evidence showing that needs three full-time and two part-time delivery truck drivers, when the permissible use of the facilities includes storage and “a delivery truck,” (emphasis added). Moreover, the evidence fails to show that owns a truck.

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

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. 206, 210-211 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). An unsupported letter indicating the number and value of shares of capital stock held by the petitioner in a foreign business is also insufficient documentation of source of funds. *Matter of Ho*, 22 I&N Dec. at 211.

The petitioner has provided evidence relating to the sale of real estate property located at the “[i]ntersection of [REDACTED]” According to an uncertified translation entitled “Sales Contract of House in Stock,” on January 2, 2011, the petitioner sold the property for 3,521,000 Renminbi (RMB), or approximately \$532,549.² The petitioner’s bank statements for an account ending in 6228 indicate that on January 5, 2011, the petitioner received 1,000,000 RMB, or approximately \$151,436, and on March 7, 2011, the petitioner received 2,521,000 RMB, or approximately \$384,299 from the buyer.³ The bank statements, which are not fully translated, however, show that on January 14, 2011, there was a 1,250,000 RMB debit, on March 18, 2011, there was a 4,071,000 RMB debit, and on March 20, 2011, there was a 2,150,000 RMB debit, from the account. Additionally, the bank statements show that on March 18, 2011, there was a 6,400,000 RMB credit, and on April 9, 2011, there was a 5,000,000 RMB credit, to the account. The petitioner has provided no evidence relating to the source(s) of these two credits. On September 26, 2011, the petitioner wired 193,000 RMB (approximately \$30,086.70) from his account ending in 6228 to each of 17 individuals. The petitioner, however, has failed to provide any information relating to the source(s) of the funds wired to the 17 individuals, as the funds from the property sale were depleted through three debits between January 2011 and March 2011.

The petitioner has also failed to demonstrate the lawful source of his funds for the following reasons. First, the uncertified translation entitled “Sales Contract of House in Stock,” dated January 2, 2011 does not have any evidentiary weight, as it has not been properly translated pursuant to the requirements under the regulation at 8 C.F.R. § 103.2(b)(3), which provides that “[a]ny 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.” The record lacks a certification from a translator, certifying that the translation provided is complete and accurate and that the translator is competent to translate the foreign language document. Indeed, although the translation contains a “[REDACTED]” heading and a footer in both English and a foreign language, the petitioner has not provided any information relating to the identity of the translator. As such, this translation has no evidentiary weight.⁴

² U.S. dollar amount on January 2, 2011 was obtained from <http://www.oanda.com/currency/converter/>, accessed on February 19, 2013, and incorporated into the record of proceeding.

³ U.S. dollar amounts on January 5, 2011 and March 7, 2011 were obtained from <http://www.oanda.com/currency/converter/>, accessed on February 19, 2013, and incorporated into the record of proceeding.

⁴ Indeed, the record contains numerous translations with a “[REDACTED]” heading and a footer in both English and a foreign language. None of these translations have any evidentiary weight. See 8 C.F.R. § 103.2(b)(3).

Even if the AAO were to consider this translation, it, along with the other evidence in the record, fails to establish that the petitioner owned the real estate property that was sold on January 2, 2011. Specifically, the record contains two uncertified translations, both entitled “Real Estate Mortgage Valuation Report.” These translations have no evidentiary weight, as they have not been properly translated pursuant to the requirements under the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, these two documents relate to the petitioner’s ownership interests in real estate properties located at [REDACTED] with a “4.8m²” land area, and at [REDACTED] with a “27.3m²” land area. Neither of these two documents or any other evidence in the record shows that the petitioner owned the property sold on January 2, 2011, which is located at the “[i]ntersection of [REDACTED] with a “310.5m²” building area. Moreover, assuming he did own that property, the record lacks evidence relating to when the petitioner purchased the property located at the “[i]ntersection of [REDACTED]” how much he paid to purchase the property, or how he accumulated the funds used to purchase the property.

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

C. 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. at 179.

The evidence in the record fails to show the petitioner’s equity investment of at least \$500,000 of personal funds in [REDACTED] bank statement for an account with account number ending in 0909 shows that on October 19, 2011, the petitioner and his wife transferred \$510,000 to [REDACTED]. The record, however, lacks [REDACTED] tax returns, or related documents, reflecting that the petitioner’s October 19, 2011 \$510,000 deposit into [REDACTED] account constitutes equity investments. Indeed, other than the petitioner’s assertions and the business plans, the petitioner has provided no other supporting evidence showing that the \$510,000 deposit is an equity investment rather than another arrangement between the petitioner and [REDACTED], such as a shareholder’s loan. In fact, [REDACTED] unaudited balance sheet, dated December 31, 2011, shows that [REDACTED] received \$511,551 from the petitioner as “Long-Term Liabilities, Loan from Stockholders(s).” This document fails to show that the \$510,000 deposit constitutes an equity investment. Instead, the document shows that the \$510,000 deposit is a loan

that [REDACTED] must repay, rather than an equity investment from the petitioner. The petitioner has provided inconsistent evidence and “it is incumbent upon [him] to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], 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 evidence.

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

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.