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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: **APR 23 2014**

Office: INVESTOR PROGRAM OFFICE

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:
[REDACTED]

INSTRUCTIONS:

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

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

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an employment creation immigrant 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]. The petitioner claimed that the business is located in a targeted employment area for which the required amount of capital invested has been adjusted downward to \$500,000.

The director determined that the petitioner made material changes to the business structure, and the petitioner had not established that his investment had created or would create the requisite 10 jobs.

On appeal, the petitioner asserts that he did not materially change his business plan and that his investment would create at least 10 jobs. For the reasons discussed below, the petitioner has not established eligibility for the benefit sought. As additional issues, the petitioner has not established that the new commercial enterprise is located in a targeted employment area for which the required amount of capital invested has been adjusted downward, that he has invested the required amount of capital into the new commercial enterprise, that he has placed the required amount of capital at risk in the new commercial enterprise, and that his invested capital was obtained through lawful means.

I. 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

On May 21, 2010, the petitioner filed Form I-526, Immigrant Petition by Alien Entrepreneur, along with supporting documentation. On June 14, 2011, the petitioner responded to the director's April 6, 2011 request for additional evidence (RFE). On August 16, 2011, the director denied the petition, determining that the petitioner made material changes and did not establish that his investment would create at least 10 full-time positions. On September 6, 2011, the petitioner filed an appeal

claiming that the change in the business structure did not constitute a material change, and that the petitioner's investment would create at least 10 jobs.

III. ISSUES ON APPEAL

A. Initial Inconsistencies and Material Change

At the initial filing of the petition, the petitioner submitted documentary evidence, including the "Confidential Investor Memorandum," reflecting that DH11 planned to loan proceeds to [REDACTED] and that [REDACTED] will serve as [REDACTED] general partner. The petitioner, however, did not submit [REDACTED] limited partnership agreement or any evidence that [REDACTED] admitted the petitioner as a limited partner. Instead, the petitioner submitted an unsigned copy of [REDACTED] operating agreement, which includes the following recital:

[REDACTED] intends to sell Units to foreign non US citizen investors and to admit as Authorized Members of the Company those investors whose subscriptions are accepted by the Managing Partner.

The petitioner also submitted a blank Amended and Restated Membership Agreement Execution Page for [REDACTED] and a subscription agreement containing conflicting information. Specifically, while the subscription agreement purports to be between the petitioner and [REDACTED], it references [REDACTED] operating agreement. In addition, the managing partners of [REDACTED] rather than the general partner of [REDACTED] signed the agreement admitting the petitioner. Thus, the initial submission included inconsistent evidence as to whether [REDACTED] would loan the petitioner's investment to [REDACTED] or whether [REDACTED] would admit the petitioner as an equity holding member. The initial submission also did not include evidence that the new commercial enterprise the petitioner listed on the petition, [REDACTED] admitted the petitioner as a limited partner.

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. 582, 591-92 (BIA 1988). 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 U.S. Citizenship and Immigration Services (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). The record does not resolve the above inconsistencies.

The director informed the petitioner in the request for evidence that the petitioner must demonstrate that [REDACTED] the new commercial enterprise, will create 10 jobs rather than [REDACTED]. It is the job-creating business that USCIS must examine in determining whether a new commercial enterprise has been created. *Matter of Soffici*, 22 I&N Dec. 158, 166 (Assoc. Comm'r 1998). Moreover, the

petitioner did not base his petition on a new commercial enterprise that is located within an approved regional center pursuant to section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), as amended by section 116 of Pub. L. No. 105-119, 111 Stat. 2440 (1997); section 402 of Pub. L. No. 106-396, 114 Stat. 1637 (2000); section 11037 of Pub. L. No. 107-273, 116 Stat. 1758 (2002); section 4 of Pub. L. No. 108-156, 117 Stat. 1944 (2003); and section 1 of Pub. L. No. 112-176, 126 Stat. 1325 (2012). Therefore, the petitioner could not use the creation of indirect jobs at DHH pursuant to the regulation 8 C.F.R. § 204.6(j)(4)(B)(iii) to satisfy the job creation requirements.

In response to the director's RFE, the petitioner submitted documentary evidence reflecting that [REDACTED] purchased [REDACTED] for \$10 on May 27, 2011. In the initial cover letter, he claimed that "[t]he entity previously in the middle was [REDACTED] which has been dissolved to make this a direct investment and job creator." Thus, in response to the director's RFE, [REDACTED] purchased [REDACTED] and dissolved that entity.

Although the RFE response cover letter claimed that the new business structure "will create a direct pathway from investment to job creation," it is well established that in visa petition proceedings, a petitioner must establish eligibility at the time of filing and that a petition cannot be approved if, after filing, the petitioner becomes eligible under a new set of facts or circumstances. 8 C.F.R. §§ 103.2(b)(1), (12); 72 Fed. Reg. 19100 (Apr. 17, 2007) (adopting 8 C.F.R. § 103.2(b)(1); 59 Fed. Reg. 1455, 1458 (Jan. 11, 1994) (explaining in the commentary to 8 C.F.R. § 103.2(b)(12) that supplemental evidence must establish that the petitioner was eligible for the benefit when the petition was filed); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (holding that a petitioner may not demonstrate the beneficiary's eligibility as a member of the professions based on coursework that postdates the filing of the petition). Moreover, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS and regulatory requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175-176 (Assoc. Comm'r 1998) (adopting the reasoning in *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition."). See also *Spencer Enterprises, Inc. v. United States*, 229 F.Supp. 1025, 1038, n.4 (E.D. Calif. 2001) *aff'd* 345 F.3d 583 (9th Cir. 2003) (upholding a finding that a construction management agreement with substantive changes "could not be accepted for the first time on appellate review"); *EB-5 Adjudications Policy*, PM-602-0083, 24-25 (May 30, 2013) (citing *Matter of Izummi*, 22 I&N Dec. at 176 and 8 C.F.R. § 103.2(b)(1) for the proposition that a petitioner cannot establish eligibility under a new set of facts during the pendency of the Form I-526 petition). [REDACTED] purchase and termination of [REDACTED] in response to the director's request for evidence in order to meet the direct job creation requirements reflects a material deviation from the business structure claimed at the initial filing of the petition. The business structure change constitutes an effort to make an apparently deficient petition conform to USCIS and regulatory requirements.

Therefore, USCIS must analyze the petition only on the basis of the original claims.

B. Employment Creation

The regulation at 8 C.F.R. § 204.6(j)(4)(i)(A) 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 ten (10) qualifying employees. Alternatively, if the new commercial enterprise has not yet created the requisite 10 jobs, the petitioner must submit a copy of a comprehensive business plan showing the need for not fewer than ten qualifying employees. 8 C.F.R. § 204.6(j)(4)(i)(B).

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 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.

At the initial filing of the petition, the petitioner indicated in Part 5 of Form I-526 that his investment had not created any positions. Thus, the petitioner was required to submit a comprehensive business plan pursuant to the regulation at 8 C.F.R. § 204.6(j)(4)(i)(B) and *Matter of Ho* showing the need to hire at least 10 employees. At the initial filing of the petition, the petitioner submitted a business plan for [REDACTED]. However, the petitioner did not submit a business plan for [REDACTED], the job-creating entity. Moreover, the petitioner has never submitted a business plan for [REDACTED]. Instead, in response to the RFE, the petitioner submitted a May 31, 2011 letter from [REDACTED] Chief Financial Officer of [REDACTED] projecting employment at a [REDACTED] location based on employment at a [REDACTED] location. This letter does not meet the requirements of *Matter of Ho*, 22 I&N Dec. at 213. The petitioner also submitted letters from officials at the [REDACTED] Chamber of Commerce, the City of [REDACTED] and the [REDACTED] County Commissioner all asserting that they have watched [REDACTED] construct a 12-bed facility and/or that it is their understanding that the company obtained the necessary licenses. Primary evidence of having obtained the necessary licenses would be copies of the licenses themselves. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). Even if the letters met the requirements of an affidavit, affidavits are only acceptable in lieu of primary evidence where the petitioner demonstrates that both primary and secondary evidence are either unavailable or do not exist. *Id.* The record does not contain the licenses, any evidence of development of property in [REDACTED] or other evidence confirming the assertions in the letters. The petitioner also did not explain why primary evidence of the licenses is

either unavailable or does not exist. Notably, the petitioner did submit a [REDACTED] license for a hospice in [REDACTED]. Regardless, the letters do not meet the requirements for a comprehensive business plan set forth in *Matter of Ho*, 22 I&N Dec. at 213.

As the petitioner has not submitted a business plan for [REDACTED] the petitioner has not established that the proposal for his investment supporting the initial filing of the petition will create at least 10 positions as required pursuant to the regulation at 8 C.F.R. § 204.6(j)(4).

C. Multiple Investors

The regulation at 8 C.F.R. § 204.6(g)(1) states that the establishment of a new commercial enterprise may be used as a basis of a petition for classification as an alien entrepreneur by more than one investor provided that each investor has invested or is actively investing the required amount of capital, and each individual investment will create at least 10 full-time positions. The regulation at 8 C.F.R. § 204.6(g)(2) states that USCIS shall recognize any reasonable agreement made among the alien entrepreneurs in regard to the identification and allocation of qualifying positions.

At the initial filing of the petition, the petitioner submitted a continuation sheet for Form I-526 reflecting that there are at least six investors seeking classification as an alien entrepreneur pursuant to section 203(b)(5) of the Act. The petitioner did not submit a business plan for [REDACTED] reflecting that his investment would create at least 60 positions. In addition, the petitioner did not submit any agreement among the other five investors in regard to the identification and allocation of any possible positions pursuant to the regulation at 8 C.F.R. § 204.6(g)(2).

D. Targeted Employment Area

Beyond the decision of the director, the petitioner has not established that his investment is in a business that is located in a targeted employment area. The AAO conducts appellate review on a *de novo* basis. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The regulation 8 C.F.R. § 204.6(e) defines a rural area and a targeted employment area. A rural area “means any area not within either a metropolitan statistical area (as designated by the Office of Management and Budget [OMB]) or the outer boundary of any city or town having a population of 20,000 or more. A targeted employment area “means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.” The regulation at 8 C.F.R. § 204.6(f) also explains that the minimum investment amount is generally \$1,000,000, but only \$500,000 if the investment is in a targeted employment area.

Again, the petitioner claimed in Part 2 of Form I-526 that his investment is based on a business that is located in a targeted employment area for which the required amount of capital invested has been adjusted downward to \$500,000. In Part 3, the petitioner claimed that the street address of [REDACTED] was “[REDACTED] GA [REDACTED]. That address is located in [REDACTED] Georgia. However, the cover letter provides: “[REDACTED] will be located in [REDACTED]

Georgia.” [REDACTED] is located in [REDACTED] County, Georgia. At issue is the location where the new commercial enterprise will be principally doing business. 8 C.F.R. § 204.6(j)(6)(ii); *see also Matter of Izummi*, 22 I&N Dec. at 172-73 (finding that a credit company located outside a targeted employment area and engaged in transactions benefitting companies outside a targeted employment area cannot qualify for the reduced investment amount). Thus, at the time of the initial investment, it is the location where [REDACTED] will be principally doing business that determines whether the new commercial enterprise is located in a targeted employment area. The initial submission did include employment projections for [REDACTED] in [REDACTED] County; however, the petitioner cannot rely on those jobs as they were not direct [REDACTED] jobs. [REDACTED] the new commercial enterprise, would be primarily doing business in [REDACTED] County. The petitioner, however, did not submit any documentary evidence establishing that [REDACTED] County, Georgia, is in a targeted employment area. Furthermore, according to OMB, [REDACTED] County, Georgia has been designated as a metropolitan statistical area (MSA) of [REDACTED] Georgia and was part of the [REDACTED] Georgia MSA as of December 2009, prior to the petitioner’s investment in 2010.¹ Therefore, [REDACTED] did not initially propose to primarily do business in a rural area. Absent evidence that [REDACTED] will be primarily doing business in a rural or high unemployment area, the petitioner is required to invest at least \$1,000,000 pursuant to the regulation at 8 C.F.R. § 204.6(f)(1).

E. Investment of Capital

Also beyond the decision of the director, the petitioner has not established that he has placed the required amount of capital at risk in the new commercial enterprise. 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.

As discussed above, absent evidence that [REDACTED] will be principally doing business in a rural or targeted employment area, the petitioner is required to invest \$1,000,000 into the new commercial enterprise pursuant to the regulation at 8 C.F.R. § 204.6(f)(1). However, the petitioner has only invested \$500,000 and has not submitted any documentary evidence demonstrating his commitment or even intent to fully invest \$1,000,000. As such, the petitioner has not established that he has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk pursuant to the regulation at 8 C.F.R. § 204.6(j)(2).

¹ See <http://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b-13-01.pdf>, Page 23, accessed on April 15, 2014, and <http://www.whitehouse.gov/sites/default/files/omb/assets/bulletins/b10-02.pdf>, Page 24, accessed on April 15, 2014, and incorporated into the record of proceeding.

Regardless, although the petitioner submitted [REDACTED] bank statement reflecting a deposit of \$500,078.00 into [REDACTED] bank account on April 5, 2010, the petitioner did not submit any documentary evidence demonstrating that his capital has been placed at risk in the new commercial enterprise. Merely establishing and capitalizing a new commercial enterprise is not sufficient to show that the petitioner has placed his capital at risk. *Matter of Ho*, 22 I&N Dec. at 210. A petitioner must submit present some evidence of the actual undertaking of business activity. *Id.* While the petitioner submitted letters in response to the RFE that indicate [REDACTED] has built a facility in [REDACTED] and obtained the necessary permits, the record contains no evidence supporting those assertions, such as the licenses themselves. The record also lacks evidence that the corporation used or has plans to use the funds the petitioner deposited with [REDACTED]. In fact, the same day [REDACTED] received the petitioner's \$500,000 it transferred those funds to an unidentified deposit account. The same account subsequently received two wire credits of \$500,000 each from [REDACTED] and [REDACTED] Bank of North Georgia account and transferred all of those funds to [REDACTED] Bank of Monticello account and [REDACTED]. The record does not demonstrate that the petitioner subsequently made those funds available to the entity responsible for job creation. Going on record without supporting documentary evidence is not sufficient for 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)). The record contains no evidence that the petitioner's funds were placed at risk.

Accordingly, the petitioner has not established that he has placed his capital at risk in the new commercial enterprise pursuant to the regulation at 8 C.F.R. § 204.6(e).

F. The Lawful Source of Funds

Also beyond the decision of the director, the petitioner has not established the lawful source of his funds. The regulation at 8 C.F.R. § 204.6(j)(3) lists the type of evidence a petitioner must submit, as applicable, including foreign business registration records, business or personal tax returns, or evidence of other sources of capital.

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. *Matter of Ho*, 22 I&N Dec. at 210-211; *Matter of Izummi*, 22 I&N Dec. 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.*

At the initial filing of the petition, the cover letter indicates that the petitioner's source of funds was his income from 2004 to 2008. The petitioner submitted an uncertified translation for his "Certificate of Income" from 2004 to 2008. The regulation at 8 C.F.R. § 103.2(b) 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 petitioner did not comply with the regulation at 8 C.F.R. § 103.2(b); therefore the uncertified translation and foreign language document have no probative value.

The director requested documentation to identify and trace all sources and origins of the funds invested into [REDACTED]. In addition, the director indicated:

[T]he petitioner’s net income at the end of year 2008 is 538,788,095 (Korean WON) or 472,172 (U.S. Dollar) which is less than the required investment of \$500,000 in a targeted employment area. There were [sic] no other evidence submitted to show that the petitioner has other source[s] of income sufficient to pay for the required investment of \$500,000 plus the additional subscription fee of \$60,000 as shown in the subscription agreement.

In response, the petitioner claimed that he owned property in Korea “which he leased for a total of 380,000,000 Korean Won, which is equivalent to \$351,419 US dollars.” In addition, the petitioner claimed that he “retired from his employment in December 2009 and [] received a severance package of 359,742,366 Korean Won, which is equivalent to \$332,724 US Dollars.”

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 *Anetekhahai*, 876 F.2d at 1220; *Lu-Ann Bakery Shop, Inc.*, 705 F. Supp. at 10; *Systronics Corp.*, 153 F. Supp. 2d at 15. The RFE cover letter provided no explanation as to why the petitioner did not previously claim that the sources of the petitioner’s funds were the proceeds of leased property and his severance package.

Nonetheless, in support of those new claims, the petitioner submitted an uncertified translation of an apartment lease agreement from February 26, 2010 to February 25, 2012, an uncertified translation of a “Calculation of Severance Pay,” and screenshots from <http://banking.shinhan.com> covering the period from December 21, 2009 to April 6, 2010 without any English language translations. Again, the petitioner did not comply with the regulation at 8 C.F.R. § 103.2(b); therefore the uncertified translations and screenshots without any English language translation have no probative value.

The petitioner did not submit any probative evidence to support his original claims that he used funds from his income from 2004 to 2008. Moreover, the petitioner did not submit any documentary evidence demonstrating that he acquired the apartment through the lawful source of funds.

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. at 190). These “hypertechnical” requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin.

Spencer Enterprises, Inc., 229 F. Supp. 2d at 1040 *aff'd* 345 F.3d at 683 (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).

As the petitioner has not sufficiently documented the source of his funds with probative evidence, the petitioner did not establish that he invested capital obtained through lawful means pursuant to the regulation at 8 C.F.R. § 204.6(j)(3).

IV. SUMMARY

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

ORDER: The appeal is dismissed.