

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: **JUL 29 2014** Office: IMMIGRANT INVESTOR PROGRAM 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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Chief, Immigrant Investor Program Office, 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 immigrant pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5). The petitioner's claimed investment is through a U.S. Citizenship and Immigration Services (USCIS) designated regional center, [REDACTED] 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). USCIS designated [REDACTED] as a regional center on July 15, 2010. The petitioner's investment is through an affiliated limited company, [REDACTED], the new commercial enterprise (NCE). The NCE is located in a targeted employment area for which the required amount of capital invested has been adjusted downward. Thus, the required amount of capital in this case is \$500,000. The July 30, 2012 Business Plan, page 4, states that the NCE would loan up to \$2 million from employment creation immigrants to [REDACTED] to fund the development, production, sale, and eventual manufacture of alcoholic gelatin shots.

The director determined that the petitioner did not demonstrate the lawful source of her invested funds, and the petitioner did not establish that her investment in the new commercial enterprise would create at least 10 full-time positions to qualifying employees. On appeal, the petitioner submits additional documentary evidence regarding the lawful source of her funds, and the petitioner claims that she submitted a comprehensive business plan regarding the job creation requirement. For the reasons discussed below, the petitioner has not overcome all of the chief's grounds for denial. As an additional issue, given the terms of the escrow agreement and the denial of the petition, the petitioner has not demonstrated that she is actively investing in the new commercial enterprise.

## I. 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

On August 14, 2012, the petitioner filed Form I-526, Immigrant Petition by Alien Entrepreneur, along with supporting documentation. On August 1, 2013, the petitioner responded to a June 6, 2013 request for additional evidence (RFE) from the Director, California Service Center. On October 17, 2013, the chief denied the petition, determining that the petitioner did not demonstrate the lawful source of funds of her investment, and the petitioner did not establish that her investment would create at least 10 full-time positions. On November 18, 2013, the petitioner filed an appeal and submitted additional documentation regarding the lawful source of her funds and claimed that she submitted a comprehensive business plan evidencing that her investment would create at least 10 full-time positions.

## III. ISSUES ON APPEAL

### A. 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). 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 petitioner submitted a copy of an Escrow Agreement, which she signed on June 4, 2012, indicating that the petitioner had deposited \$540,000.00 into an escrow agent's bank account. [REDACTED] the petitioner's prior attorney in this proceeding, manages the escrow account. Moreover, the agreement indicates that, upon approval of the Form I-526 petition or written direction from the petitioner, the escrow agent would distribute \$500,000.00 to the NCE, and \$40,000.00 to the regional center. The petitioner submitted a [REDACTED] transaction record reflecting a June 6, 2012 check deposit in the amount \$540,000.00 into account [REDACTED]. The bank receipt did not indicate the source of the check or the bank account holder.<sup>1</sup> Moreover, although the petitioner signed the escrow agreement on June 4, 2012 indicating that the funds were deposited as documented by attached exhibit A, the transaction record indicates the transaction occurred on June 6, 2012. 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

<sup>1</sup> As discussed below, the petitioner subsequently documented that [REDACTED] PA is the account holder for the [REDACTED] attorney trust account.

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). For the reasons discussed below, the petitioner did not document the path of funds to the NCE. In addition, the petitioner did not submit any documentary evidence demonstrating that her investment was from lawfully obtained capital.

In the RFE, the director requested that the petitioner submit evidence that she obtained her invested capital through lawful means. Moreover, the RFE specifically stated that “[a]ny document submitted to the USCIS containing a foreign language, must be accompanied by a full English language translation . . . .” (Emphasis in original.) In response, the petitioner claimed that her investment of capital derived from two businesses – [REDACTED] and [REDACTED]. The petitioner submitted foreign language documents regarding the articles of incorporation for both businesses, a property sale deed listing Ittaca as the buyer, various bank statements for both businesses from 2008 - 2012, Venezuelan tax returns for both businesses from 2008 – 2012, and her personal Venezuelan tax returns from 2009 to 2012. The petitioner also submitted “Extract Translation[s]” for all of the foreign language documents. 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.” As the petitioner submitted partial translations, they do not comply with the regulation at 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence has no probative value.

Notwithstanding the above, according to the extracted translations for the articles of incorporation for [REDACTED], the petitioner purchased 30,000 shares with a par value of [REDACTED] 1,000.00 for a total of [REDACTED] 30,000,000.00 (USD 15,645) on October 26, 2004.<sup>2</sup> Similarly, regarding [REDACTED] the petitioner purchased 25,000 shares with a par value of [REDACTED] 1,000.00 for a total of [REDACTED] 25,000,000.00 (USD 15,625) on February 5, 2004.<sup>3</sup> The petitioner did not submit any documentary evidence demonstrating that the funds she used to purchase shares in [REDACTED] were lawfully obtained. Furthermore, according to the extracted translations, the petitioner’s gross wages and salary for 2012 were [REDACTED] 323,470.00 (USD 75,226), for 2011 was [REDACTED] 235,722.00 (USD 54,819), for 2010 was [REDACTED] 168,957.00 (USD 78,584) and for 2009 was [REDACTED] 122,180 (USD 56,828).<sup>4</sup> The petitioner’s gross income does not reflect that she earned enough income to account for her

<sup>2</sup> See <http://www.xe.com/currencytables/> [REDACTED], accessed on July 9, 2014, and incorporated into the record of proceeding.

<sup>3</sup> See <http://www.xe.com/currencytables/> [REDACTED] accessed on July 9, 2014, and incorporated into the record of proceeding.

<sup>4</sup> The [REDACTED] is obsolete and was replaced by [REDACTED] on January 1, 2008. See <http://www.xe.com/currencytables/> [REDACTED], <http://www.xe.com/currencytables/> [REDACTED] and <http://www.xe.com/currencytables/> [REDACTED], accessed on July 9, 2014, and incorporated into the record of proceeding.

investment of \$500,000.00. Likewise, according to the extracted translations of the petitioner's [REDACTED] account \* [REDACTED], which only indicated the monthly available balance, the petitioner's last statement (December 2011) reflected a balance of only [REDACTED] 614,245.12 (USD 142,848).<sup>5</sup> In addition, according to the extracted translation of the petitioner's second [REDACTED] account \* [REDACTED] the last statement prior to the investment (November 2011) reflected a balance of [REDACTED] 387,701.52 (USD 90,163).<sup>6</sup> Accordingly, the petitioner's personal income and bank statements do not demonstrate that she accumulated income and maintained sufficient funds in her bank accounts to cover her \$500,000.00 investment.

In addition, the petitioner submitted her bank statements from [REDACTED] account \* [REDACTED] for the periods of January 2013 to April 2013, [REDACTED] account \* [REDACTED] for the periods of February 2013 to June 2013, and [REDACTED] account \* [REDACTED] for the period of March 2013 to May 2013. The bank statements, however, covered the periods after the petitioner's investment in June 2012.

The director determined that (1) the petitioner did not submit any evidence to establish the initial source of funds used to start her businesses in 2004, (2) the petitioner did not demonstrate the path of funds into escrow, and (3) the petitioner did not submit full English language translations.

On appeal, the petitioner claims that the director placed an excessive burden on her by requiring her to submit evidence of the source of her investment in [REDACTED] and [REDACTED] in 2004. Although the petitioner cites to the regulation at 8 C.F.R. § 204.6(j)(3)(ii) regarding the submission of "any other tax returns of any kind filed within five years," the petitioner must demonstrate that her invested capital was obtained through lawful means. 8 C.F.R. § 204.6(j)(3). As the petitioner claimed that the source of her investment was based on her investment in two businesses in 2004, the petitioner must establish that her source(s) of investment in those two businesses derived from lawfully obtained 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. 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.* Moreover, the regulation at 8 C.F.R. § 204.6(j) provides that USCIS may request evidence it deems appropriate in addition to the evidence set forth in the subparagraphs of that section. Therefore, the director did not place an excessive burden on the petitioner.

Moreover, on appeal, the petitioner claims that she submitted English language translations for all relevant evidence. Again, the petitioner submitted partial translations for all of the foreign language documents. On appeal, the petitioner did not submit any translations for the previously submitted documentation. As such, the petitioner has not resolved that issue.

<sup>5</sup> See <http://www.xe.com/currencytables> [REDACTED] accessed on July 9, 2014, and incorporated into the record of proceeding.

<sup>6</sup> See <http://www.xe.com/currencytables> [REDACTED] accessed on July 9, 2014, and incorporated into the record of proceeding.

Furthermore, on appeal, the petitioner submits a flow chart attempting to explain the path of funds. The flowchart indicates that [REDACTED] buys bonds in bolivars to pay the profits to the partners, and deposits the funds from the sales of the bonds, in U.S. dollars, into a [REDACTED] account. [REDACTED] then transfers the money to a [REDACTED] account from the account holder transfers the profits to the partners. On appeal, the petitioner does not provide a flowchart or further claim any source of funds from [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*, 876 F.2d at 1220; *Lu-Ann Bakery Shop, Inc.*, 705 F. Supp. at 10; *Systronics Corp.*, 153 F. Supp. 2d at 15.

In support of the chart, on appeal, the petitioner submits [REDACTED] bank statements from [REDACTED] for account \* [REDACTED] reflecting a May 14, 2012 wire-out transaction of \$135,000.00 for [REDACTED]. Although the petitioner submits several [REDACTED] bank statements for the period of January 2012 to December 2012, there are no other wire-out transactions (with the exception of a November 14, 2012 wire transfer to [REDACTED] or any fund transfers to the petitioner. The petitioner has not accounted for the remaining \$365,000 investment from [REDACTED]. Moreover, the extract translation for the petitioner's 2012 tax return does not reflect that he received a \$135,000 dividend, and Ittaca's 2012 tax return does not reflect that it issued any dividends.

The petitioner also submits [REDACTED] bank statements from [REDACTED] for account [REDACTED] reflecting a May 14, 2012 wire-out transaction of \$250,000.00 to the petitioner's [REDACTED] account and an April 13, 2012 transfer to the petitioner of \$10,000. As the petitioner did not document the path from [REDACTED] account to its [REDACTED] account, the petitioner has not demonstrated the source of the April and May [REDACTED] transfers to the petitioner. Although the petitioner submits other [REDACTED] statements for the period of January 2012 to May 2012, there are no other wire-out transactions, or any fund transfers, to the petitioner.

Further, the petitioner submits her [REDACTED] statement for account \* [REDACTED] reflecting a wire-in transaction on May 14, 2012, for \$250,000.00 from [REDACTED] account, and a wire-in transaction on May 14, 2012, for \$135,000.00 from [REDACTED] account. The statement does not reflect any other wire-in transactions to account for the remaining \$115,000.00 investment.

Finally, the [REDACTED] account \* [REDACTED] statement contains a withdrawal in the amount of \$540,000.00 on May 16, 2012. The petitioner also submits [REDACTED] statement for account \*9895 reflecting two deposits of \$540,000.00 on June 6, 2012. The petitioner also submits a copy of a [REDACTED] receipt reflecting a deposit of \$540,000.00 on June 6, 2012. Although the petitioner's name is handwritten on the side of the bank receipt, the actual bank receipt does not contain any identifying information to confirm that the deposit was from the petitioner's investment,

and the petitioner has not submitted any other supporting documentation to confirm the petitioner's deposit.

For the reasons discussed above, as the petitioner has not sufficiently documented the source and path of his funds with probative evidence, the petitioner did not establish that she invested capital obtained through lawful means pursuant to the regulation at 8 C.F.R. § 204.6(j)(3).

#### 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. at 213. Elaborating on the contents of an acceptable business plan, *Matter of Ho* states that the plan should contain a market analysis, the pertinent processes and suppliers, marketing strategy, organizational structure, personnel's experience, staffing requirements, timetable for hiring, job descriptions, and projections of sales, costs and income. The decision concludes: "Most importantly, the business plan must be credible." *Id.*

At the initial filing of the petition, the petitioner submitted a July 30, 2012 Business Plan indicating that her investment would create 15 direct jobs and 35 indirect jobs. The petitioner also submitted a July 15, 2012 Economic Impact Analysis that [REDACTED] prepared. USCIS designated [REDACTED] as a regional center on July 15, 2010, two years before the dates on the business plan and economic analysis. The petitioner has not claimed that the [REDACTED] business plan or economic analysis were part of the regional center proposal such that USCIS has already reviewed those documents. As such, USCIS need not afford either document deference. *EB-5 Adjudications Policy*, PM-602-0083, p. 14-15, 23 (May 30, 2013).

The director raised several issues in the RFE. In the final decision, the chief acknowledged that the petitioner had resolved the issue of whether the final projection of 53 jobs included the direct jobs because, even if those direct jobs are included, the 53 projected jobs would cover the four anticipated investors. The chief, however, concluded that the petitioner has not resolved the remaining issues the director raised in the RFE.

First, in the RFE, the director indicated that the petitioner did not source and itemize all pro forma financial data. In response, the petitioner cited to the previously submitted economic impact analysis and private offering memorandum. The chief determined that the excerpts did not explain the derivation of the pro forma financial data, and the petitioner did not submit a detailed and itemized pro forma financial data. On appeal, the petitioner claims that she complied with the submission of a

comprehensive business plan set forth in *Matter of Ho* and cites to sections of the business plan. The petitioner must submit a comprehensive business plan. 8 C.F.R. § 204.6(j)(4)(i)(B). To be “comprehensive,” a business plan must be sufficiently detailed to permit the Service to draw reasonable inferences about the job-creation potential. *Matter of Ho*, 22 I&N Dec. at 213. Mere conclusory assertions do not enable USCIS to determine whether the job-creation projections are any more reliable than hopeful speculation. *Id.* The business plan does not reflect the source of the pro forma financial data, and the petitioner did not submit detailed and itemized pro forma financial data that would meet the elements of a “comprehensive” business plan. Although the chief’s decision indicated that the petitioner did not submit detailed and itemized pro forma financial data, the petitioner does not submit the information on appeal.

Second, in the RFE, the director indicated that the petitioner did not demonstrate that the sales projections and the production and marketing costs were reasonable when compared to industry standards, and the input parameter was not reliable because the sales forecasts and pro forma financial statements do not demonstrate whether the sales projections are reasonable to the current market environment or when compared to industry standards. In response, the petitioner indicates that the sales projections and production and marketing costs were prepared by [REDACTED] and that [REDACTED] President, based the projections on actual industry experience. The chief determined that the petitioner did not submit any financial documents to support Mr. [REDACTED] claims, and the petitioner did not provide any evidence demonstrating a contractual agreement of [REDACTED] to distribute the alcoholic gelatin shots.

On appeal, the petitioner claims that it is well beyond the intent of *Matter of Ho* to require financial documents from [REDACTED] an unrelated entity. The petitioner did not submit any documentary evidence to support her assertions that [REDACTED] provided the sales projections as well as the production and sales costs. 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. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). As there is no evidence indicating that [REDACTED] provided the projections for the business plan, and the petitioner did not support the plan with any financial documents, the business plan is not sufficiently supported to be credible. Most importantly, the business plan must be credible. *Matter of Ho*, 22 I&N Dec. at 213. Moreover, although the petitioner had the opportunity to submit any contractual agreements [REDACTED] has entered to distribute the alcoholic gelatin shots on appeal, she did not do so. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. *Matter of Ho*, 22 I&N Dec. at 213.

Third, in the RFE, the director noted that [REDACTED] intended to initially outsource production before moving in-house after 12 months. The director indicated that the petitioner did not clarify the expenses related to the engineering and quality control activities, and the change in production processes appeared to be inconsistent with the estimates provided in the five-year profit and loss projection. In response, the petitioner indicated that [REDACTED] will solely rely on subcontractors to fill and package its products over the next five years, and the petitioner claimed that the five-year projections already take the costs of such contract filling into account and are consistent with the

project's plans. The chief determined that the petitioner did not submit any updated development budgets or schedules to support the claims.

On appeal, the petitioner claims that the changes in the production process are immaterial to the profit and loss projections or the performance of the business. The petition did not submit any documentary evidence to support her assertions. 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. at 190). Moreover, the July 30, 2012 business plan, page 4, states that the third and fourth investor would fund the transfer of the manufacturing process in-house "to lower product costs." Accordingly, the transfer was integral to the financial projections and need for a total of four investors. The petitioner has not established that the change to rely solely on subcontractors to fill and package its products over the next five years would have no impact on the profit or loss of the business.

Fourth, in the RFE, the director indicated that the petitioner did not provide a timeline for the proposed project in order to establish that the job creation would occur within the required timeframe. In response, the petitioner submitted a timeline for the development, manufacturing, and distribution of the product line reflecting that the first two immigrant investors would gain approval during the second quarter of 2013, and [REDACTED] would achieve annualized revenues of \$1.5 million by the fourth quarter of 2014. The chief indicated that the previously submitted economic analysis reflected that the petitioner sought to use the third-year revenue estimate as an input into [REDACTED]. The chief determined that the petitioner did not indicate the timeline when the revenue from operational year three would occur, so as to determine if the job creation would occur within two years and six months of the approval of the petition.

On appeal, the petitioner claims that the timeline was predicated on the first petition being approved some six to nine months after filing, and cites to page 23 of the economic analysis and page 28 of the business plan. Page 23 of the economic analysis reflects [REDACTED] annualized revenue after three years, and page 28 of the business plan reflects three year monthly sales projections. As the chief does not appear to have considered the 24-month employment projections based on second year revenues, page 22 of the economic analysis, we withdraw that concern. We need not remand the matter for consideration of those numbers, however, because the petitioner has not resolved the remaining bases of denial.

For the reasons discussed above, the petitioner has not submitted a comprehensive business plan demonstrating that her investment would create at least 10 positions as required pursuant to the regulation at 8 C.F.R. § 204.6(j)(4).

### C. Investment of Capital

Beyond the chief's decision, the petitioner has not demonstrated that she has maintained her investment in the NCE. We may dismiss an appeal on an application or petition that fails to comply with the technical requirements of the law even if the underlying decision 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 we conduct appellate review on a *de novo* basis).

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. The petitioner must show actual commitment of the required amount of capital.

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 previously discussed, the petitioner submitted an escrow agreement reflecting that she deposited \$540,000.00 investment into [REDACTED] trust account. The escrow agreement states that “[i]n the event the I-526 is not approved, then the above funds (\$540,000) will be returned to the investor by cashier’s check within three days of receipt of the denial notice.” The petition was denied on October 17, 2013. In accordance with the terms of the escrow agreement, [REDACTED] should have returned the petitioner’s investment to the petitioner within three days of receipt of the denial notice. (The chief addressed the denial to [REDACTED] as the petitioner’s attorney at the time). The petitioner has not submitted any documentary evidence demonstrating that her investment is still in escrow or that she is actively investing in the NCE.

Accordingly, the petitioner has not established that she is actively in the process of investing the required amount of capital pursuant to the regulation at 8 C.F.R. § 204.6(j)(2).

#### 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.