

(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 27 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:

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 Chief, Immigrant Investor Program Office (IPO), 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 new commercial enterprise (NCE), the

According to the business plan, the NCE “is primarily engaged in wholesaling and exporting sea cucumber[s] to Asia.” The petitioner indicated in part 2 of the petition that the NCE is located in a targeted employment area. Thus, the required amount of equity investment is \$500,000.

In his July 11, 2013 decision, the chief denied the petition because the petitioner did not document the lawful source of the required amount of capital because he did not provide translations that the translator had certified according to the requirements set forth pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), and the petitioner did not establish that his claimed investment has created or will create at least 10 full-time positions for qualifying positions.

On appeal, the petitioner submits a brief and supporting documents. For the reasons discussed below, the petitioner has not overcome either of the chief’s two grounds for denial. Accordingly, the petitioner’s appeal must be dismissed.

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

The petitioner filed the petition on October 17, 2012, and submitted supporting documentation. On March 5, 2013, the director of the California Service Center issued a Request for Evidence (RFE) pursuant to the regulation at 8 C.F.R. § 103.2(b)(8) requesting the petitioner to provide additional information, including: (1) evidence that the petitioner has placed the capital invested at risk; (2)

evidence of the lawful source of the petitioner's funds; and (3) evidence that the claimed investment has created or will create at least 10 full-time positions for qualifying employees. The petitioner responded to the director's RFE with a letter from [REDACTED] the NCE's Sales Manager and Corporate Secretary, dated May 22, 2013, and supporting documents, many of which the petitioner had previously provided.

In his July 11, 2013 decision denying the petition, the chief concluded that the petitioner's evidence did not show: (1) the lawful source of the required amount of capital; or (2) the claimed investment has created or will create at least 10 full-time positions for qualified employees.

On appeal, the petitioner filed a brief, dated September 6, 2013, and supporting documents, many of which the petitioner had previously provided. On February 21, 2014, the AAO issued the petitioner a notice of adverse information and intent to dismiss the appeal, advising the petitioner that the evidence in the record raised serious questions regarding the credibility of the evidence submitted to establish the petitioner's eligibility. Specifically, there were inconsistencies in the record regarding the NCE's stock certificates issued to the petitioner and the NCE's employment positions and employment status.

In accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), the petitioner was afforded an opportunity to submit an explanation to rebut the derogatory information. On March 25, 2014, the petitioner responded. For the reasons discussed below, while the petitioner has overcome the concerns regarding the ownership of the NCE, the petitioner has not established his eligibility for the classification sought. In addition, while the AAO also expressed an intent to make a finding of material misrepresentation, the petitioner has overcome the bases of that intention.

III. ISSUES ON APPEAL

A. Stock Shares

The petitioner submitted bank documents reflecting that on December 14, 2011, he wired \$500,200 into the NCE's account ending in [REDACTED]. The petitioner also submitted a common stock certificate, dated August 1, 2012, reflecting that he owned 500,200 shares of the NCE's stock. According to the petitioner's business plan and the NCE's secretary, [REDACTED] the petitioner is "the exclusive investor and sole owner of [the NCE]." As noted in the February 21, 2014 decision, the record of proceeding contains the Form I-129, Petition for a Nonimmigrant Worker, which the NCE filed on the petitioner's behalf on November 15, 2013. According to the Internal Revenue Service (IRS) Form 1125-E, Schedule G and IRS Form 5472, Schedule L, the NCE's stock increased from \$1,000 to \$501,200 in 2011, but the petitioner did not have any ownership in the NCE as of December 31, 2011. Moreover, according to IRS Form 1125-E, [REDACTED] owned 10 percent of the NCE's common stock in 2011 and according to Schedule G, the [REDACTED] owned the remaining 90 percent. Further, according to IRS Form 5472, in 2011, the [REDACTED] located in [REDACTED] Nangang District, China was a foreign shareholder, owning at least 25 percent of the NCE. Although the petitioner transferred \$500,200 to the NCE on December 14, 2011, the only corporate documentation of his ownership was the August 1, 2012 share certificate and stock ledger.

The record did not contain cancelled stock certificates for the previous owners or any indication on the stock ledger indicating that the NCE issued stock to any owner prior to August 1, 2012.

As acknowledged in the AAO's notice, the Form I-129 did identify the petitioner as the current sole owner of the NCE and the submitted 2012 tax return confirmed that information; however, the total amount of capital remained \$500,200 in 2012. A review of the petitioner's response reflects that the petitioner submitted sufficient documentary evidence to reconcile the discrepancies regarding the NCE's issuance of stock to the petitioner. Specifically, [REDACTED] explains that the NCE did not issue any stock prior to the August 1, 2012 certificate the NCE issued to the petitioner.

Assuming the \$500,200 in capital on the 2011 tax return represents the petitioner's December 2011 investment even though he is not listed as a shareholder until 2012, the 2011 tax return also reflects \$1,150,111 in gross receipts, which covers the NCE's cost of goods, listed as \$1,049,632. The NCE's net income in 2011 was \$4,794. Thus, at the time of the petitioner's investment, the NCE was an operational business covering its expenses, including its inventory, with its proceeds. While the NCE's bank statement reflects use of some of the petitioner's capital towards inventory, neither the petitioner's statements nor the business plan discusses the NCE's need for additional capital in 2012 and explains how the full amount of the petitioner's December 2011 investment would be used for capital expenses such as expanding the business. The NCE's 2012 tax return also shows a profit and the financial projections in the business plan reflect a gross income that more than covers all expenses in 2013 through 2017. As such, the petitioner, who is not one of the original shareholders, has not sufficiently documented that the full amount of his investment, which he made in an operational and profitable business with no projected capital expenses, is at risk. *Cf. Al Humaid v. Roark*, 2010 WL 308750 (N. D. Tex. Jan. 26, 2010) (upholding a finding that funds invested in an overcapitalized company with no capital expenditures forecasted are not at risk).

B. 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 his[her] burden of establishing that the funds are his[her] own funds. *Id.*

The chief found that the petitioner did not show the lawful source of his funds because he did not provide a certificate of translation for the Chinese documents. Specifically, at the initial filing of the petition, the petitioner submitted a photocopy of a blanket translation certificate from [REDACTED], dated January 4, 2012, which was attached to the translation of the Real Estate Mortgage Deed. The petitioner did not provide a certified translation for each of the foreign language documents. The regulation at 8 C.F.R. § 103.2(b)(3) provides that "[a]ny document containing foreign language

submitted to [the United States Citizenship and Immigration Services] 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." On appeal, the petitioner concedes that he had not provided the requisite certificate of translation, stating that the certificate of translation "was inadvertently missing from the RFE response." On appeal, the petitioner files a translation certificate, dated August 8, 2013.

The translation certificate filed on appeal provides, "I [redacted] hereby certify the translation to be complete, accurate, true and in conformity with the original Chinese text to the best of my knowledge, ability and understanding." The certificate lists a Real Estate Mortgage Deed, a Personal Loan Contract, and a Real Estate Lease Agreement among the Chinese documents in the record that have a complete English translation. A review of the translations, however, shows that the translator did not translate the Chinese documents in their entirety. Contrary to [redacted]'s assertions made in the translation certificate, the English translations are not complete. Specifically, the translations for these three documents contain many ellipses, denoting that the translator did not translate all of the information contained in the Chinese documents. In addition, the English translation for the Real Estate Mortgage Deed is six pages, whereas the original Chinese document is 17 pages. The English translation for the Personal Loan Contract is nine pages, whereas the original Chinese document has 27 pages. The English translation of the Real Estate Lease Agreement has one page, whereas the original Chinese document has two pages. As the translation certificate purports to affirm the completeness of translations that are not, in fact, complete, the probative value of the translations is diminished.

Moreover, even if the incomplete English translations were probative evidence, they do not establish the lawful source of the petitioner's funds. Specifically, the petitioner asserts that the funds he invested in the NCE came from a 3,210,000 Renminbi (RMB) personal loan he obtained from [redacted], Ltd. on November 22, 2011.¹ He claims to have used his real estate property located in [redacted] China, which had an 11,038,900 RMB appraisal value, as collateral for the loan.² The petitioner has provided a Certificate of Real Estate Ownership, registered on October 20, 2009. The petitioner has also provided a Deed Tax Payment Certificate, showing a payment of 200,000 RMB in taxes in October 2009. At the initial filing of the petition, the petitioner claimed that he purchased the real estate property in 2009 for 4,000,000 RMB, or approximately \$586,803.³ The petitioner further claimed that he "had been an executive manager for two successful biotechnology companies," and "[d]ue to his excellent leadership, he gained a sizable income." Going on record without supporting documentary evidence is not

¹ On November 22, 2011, 3,210,000 RMB was approximately \$505,454. See <http://www.oanda.com/currency/converter>, accessed on April 30, 2014, and incorporated into the record of proceeding.

² On November 22, 2011, 11,038,900 RMB was approximately \$1,738,210. See <http://www.oanda.com/currency/converter>, accessed on April 30, 2014, and incorporated into the record of proceeding.

³ On October 20, 2009, 4,000,000 RMB was approximately \$586,803. See <http://www.oanda.com/currency/converter>, accessed on April 30, 2014, and incorporated into the record of proceeding.

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)). Page 5 of the business plan provides that the petitioner "was the previous General Manager of a couple [of] successful biotechnology companies." The record, however, lacks evidence showing the petitioner's income before he purchased the property, such that he could have lawfully obtained or accumulated 4,000,000 RMB prior to 2009 to purchase the property.

Moreover, according to the Personal Loan Contract, Rule 3 states that "[the petitioner] is not allowed to use the loan fund for equity investment, registered capital or share increase; nor investment in stock, futures, financial derivatives; nor real estate purchase." Furthermore, Rule 15 provides that the petitioner is in default if "[the petitioner] is unable to use the loan in accordance with the contract." As previously discussed, on December 14, 2011, the petitioner wired \$500,200 into the NCE's account, and he purchased the NCE's stock for \$500,200. The petitioner's equity investment and stock purchases were in violation of the Personal Loan Contract.

Accordingly, the petitioner has not shown the lawful source of the \$500,200 he claimed to have invested in the NCE.

C. 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.*

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.

Section 203(b)(5)(D) of the Act, as amended, 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. Calif. 2001) *aff’d* 345 F.3d 683 (9th Cir. 2003) (finding this construction not to be an abuse of discretion).

On appeal, the petitioner claims that the NCE has now hired ten full-time qualifying employees. As supporting evidence, the petitioner has filed the employees’ pay stubs; Employment Eligibility Verifications, Forms I-9; Employee’s Withholding Allowance Certificates, IRS Forms W-4; Employer’s Quarterly Federal Tax Returns, IRS Form 941; and California Quarterly Contribution and Wage Adjustment Forms, Forms DE 9ADJ. The evidence, however, does not establish that all 10 employees are full-time employees working at least 35 hours a week. According to the pay stubs, six of the ten employees – [REDACTED] and [REDACTED] – receive a salary. Neither their pay stubs nor any other evidence in the record establish the number of hours these six employees work each week or the employees’ hourly wage. Similarly, although page 17 of the business plan provides that the “employees’ salaries are based pay plus bonus based on the regular review of performance,” it does not specify the number of hours each employees work each week. Moreover, [REDACTED] asserts in his March 21, 2014 statement that he began working for the NCE in March 2010, 20 months prior to the petitioner’s investment. As such, the petitioner has not provided sufficient evidence showing that the petitioner’s investment has created at least 10 new full-time positions for qualifying employees.

As the evidence does not show that the petitioner’s claimed investment has resulted in the creation of at least 10 full-time positions for qualifying employees, the regulation at 8 C.F.R. § 204.6(j)(4)(i) requires the petitioner to provide a copy of a comprehensive business plan showing the need for not fewer than 10 qualifying employees. *See Matter of Soffici*, 22 I&N Dec. at 168. The comprehensive business plan should “explain the business’s staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions.” *Matter of Ho*, 22 I&N Dec. at 213. The record includes a business plan the petitioner initially filed in support of the petition. Page 16 of the business plan provides that “[a] total of eleven full-time employees excluding [the petitioner] are anticipated to be hired in order to maintain efficient operating of the company.” According to the accompanying organizational chart, as of January 2012, the NCE had four employees – a Sales Manager, a Sales Clerk, a Bookkeeper, and a Packing/Shipping Clerk. In addition, the NCE was planning to hire an additional seven employees – an Operating Manager by February 2013, a Purchasing Clerk by December 2012, a second Purchasing Clerk by September 2013, a Market Specialist by February 2014, a second Packing/Shipping Clerk by February 2013, a third Packing/Shipping clerk by December 2013, and an Office Assistant by January 2014. Although the business plan includes projected figures on an annual basis from 2013 through 2017, it does not provide any explanation justifying the hiring time line or information relating to the circumstances under which the NCE would add a new position. In addition, the business plan provides that the NCE will hire a Market Specialist by February 2014, who among other things will “[d]evelop opportunities . . . [relating to] Internet marketing, direct marketing, [and] tradeshow development,” and “[e]xecute the day to day delivery of email marketing campaigns, e-newsletters, [and] invitations.” The plan, however, projects expenses for marketing and advertising to remain the same from 2013 through 2017.

As the chief pointed out in his decision, the petitioner submitted a second hiring timetable in response to the RFE. According to the revised timetable, the NCE would delay the hiring of an Operating Manager until July 2013 and the hiring of a second Packing/Shipping Clerk until August 2013. On appeal, the petitioner files a second revised hiring timetable, entitled "Organizational Chart, September 2013," indicating that the NCE was delaying the hiring of a third Purchasing Clerk until February 2014. Similar to the initial hiring timetable, the petitioner has provided insufficient evidence justifying the hiring time line or information relating to the circumstances under which the NCE would add a new position. Additionally, the July 26, 2011 Standard Industrial/Commercial Multi-Tenant Lease between [REDACTED] LLC, and the NCE does not support the petitioner's assertion that the NCE may have three Packing/Shipping Clerks working in its office. On appeal, the petitioner contends that the NCE needs three full-time Packing/Shipping Clerks because during 2011 and 2012, over \$1.7 million in goods were "first shipped to the NCE's premises in the U.S. for processing, packing and shipping." The petitioner submits color photographs showing weighing and packing instruments and individuals sorting and processing dried goods in an office. The initial business plan provides that the major duties of a Packing/Shipping Clerk include "weigh[ing] and pack[ing] the products, tak[ing] record of quality and quantity of every batch of product, assur[ing] all the boxes has [sic] been sealed properly." In response to the RFE, the NCE's Sales Manager and Corporate Secretary, [REDACTED] indicated that Packing/Shipping Clerks will "help weigh, sort and package the increasing amounts of goods purchased and sold by the NCE." According to the "Agreed Use" section of the lease, however, the NCE may only use the leased office as a "general office for an import/export company and for no other use without the prior written consent of the lessor." The petitioner has not shown that processing, sorting, weighing and packaging dried goods constitute agreed uses under the lease.

Furthermore, as indicated in the petitioner's notice of derogatory information, the petitioner submitted a January 2012 business plan stating that the NCE hired [REDACTED] to fill the NCE's Sales Manager position. The business plan included an organizational chart that listed the Sales Manager position as one of the full-time positions that the NCE created. Similarly, on appeal, the petitioner submitted an updated September 2013 organizational chart indicating that [REDACTED] occupied the Sales Manager position. The organizational chart the NCE submitted in support of the Form I-129 in November 2013 contradicted this information. This organizational chart lacked a Sales Manager position, and it indicated that [REDACTED] is the NCE's General Manager and Marketing Manager, positions that are not included in documents that the petitioner filed in support of his Form I-526.

In response, the petitioner submits an uncertified translation of his statement attempting to explain the inconsistencies. The uncertified translation is not in compliance with the regulation at 8C.F.R. § 103.2(b)(3); and therefore has no probative value. Nevertheless, the petitioner claims that [REDACTED]'s "role has transformed over time," and he initially served as a Sales Manager beginning in March 2010 and has performed in roles as a General Manager and Marketing Manager. In addition, the petitioner submits a statement from [REDACTED] who claims that he is currently employed as a General Manager, a position which did not exist at the time of the initial filing of the petition. [REDACTED] further confirms that he was initially hired as a Sales Manager in March 2010 and promoted to General Manager in September 2013. Moreover, [REDACTED] claims that the NCE has

restructured the Sales Manager position and the functions are contained in other current positions within the NCE, including the Market Specialist. Finally, the petitioner submits an employee chart reflecting that [REDACTED] occupied the Sales Manager and General Manager positions. The petitioner does not submit independent, objective evidence reconciling the discrepancies of [REDACTED]'s positions with the NCE. 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 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 petitioner does not submit documentation, such as an employment contract, establishing that [REDACTED] changed positions from Sales Manager to General Manager in September 2013.

In addition, as indicated in the February 21, 2014 notice of derogatory information, the original organizational chart attached to the January 2012 business plan listed [REDACTED] as a Sales Clerk. In the September 2013 updated organizational chart filed on appeal, [REDACTED] is listed as an Operating Manager. In the organizational chart the NCE filed in support of the November 2013 Form I-129, [REDACTED] is again listed as a Sales Clerk, and [REDACTED] is listed as an Operations Manager. The petitioner, however, claimed in the brief submitted on appeal that [REDACTED] no longer worked for the NCE as of September 6, 2013. Further, the updated organizational chart on appeal indicated that the Shipping Clerks reported to the Operating Manager [REDACTED] rather than the Purchasing Clerk, [REDACTED]. The organizational chart the NCE submitted in support of the November 2013 Form I-129, however, indicated that the Shipping Clerks reported to [REDACTED] as the Purchase Clerk and Product Manager.

Regarding [REDACTED] the petitioner claims that her employment was terminated on May 15, 2013 and re-hired on September 16, 2013, when she was able to present documentation of her employment authorization in the United States. The petitioner submitted a copy of Form I-797, dated September 10, 2013, for [REDACTED] reflecting that her conditional lawful resident status was extended for one year. Further, the petitioner submitted a letter from [REDACTED] Senior Designer for [REDACTED] who indicated that he began working with [REDACTED] in November 2013 regarding designs for dried sea cucumber packages. Thus, the petitioner has resolved this inconsistency.

Regarding the remaining inconsistencies, however, the petitioner submits the uncertified translation of his statement claiming that internal reorganization and restructuring "led to shifting various individuals into alternate roles as well as reclassifying positions to accommodate the personnel changes." The petitioner does not, however, submit independent, objective evidence to support his claims. 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). 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 (D.D.C.1988); *Systronics Corp.*, 153 F. Supp. 2d at 15. While a few errors or minor discrepancies are not reason to question a petitioner's credibility, numerous errors and discrepancies, especially where USCIS is evaluating the credibility of a business plan, raise serious concerns about the viability of the enterprise. *Spencer Enterprises, Inc.*, 345 F. 3d at 694.

The petitioner has not sufficiently explained or reconciled all of the inconsistencies regarding the NCE's employment and positions.

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

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.