

(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 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:

SELF-REPRESENTED

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment creation alien pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5). The petitioner indicated that he established [REDACTED] Inc. as a new commercial enterprise (NCE) through the creation of a new business. According to the business plan the petitioner initially filed in support of the petition, the NCE “looks to develop and market [] housewares in the United States.” According to the petition, an Application for Employer Identification Number, Internal Revenue Service (IRS) Form SS-4, and a City of [REDACTED] Certificate of Registration that the petitioner initially filed in support of the petition, the NCE’s principal business is wholesale of housewares. The petitioner asserted that the NCE is located within [REDACTED] California, a targeted employment area (TEA). As the record now supports that assertion, the amount of capital he is required to invest is \$500,000.

On August 19, 2013, the chief denied the petition. For the reasons discussed below, the petitioner has not overcome any of the director’s grounds for denial. Accordingly, the petitioner’s appeal will be dismissed.

## I. THE LAW

Section 203(b)(5)(A) of the Act, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

- (i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
- (ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant’s spouse, sons, or daughters).

## II. PROCEDURAL AND FACTUAL HISTORY

The petitioner filed the petition on September 7, 2012, supported by the following types of evidence: (1) documents relating to the status of [REDACTED] Los Angeles, California, as a TEA; (2) the NCE’s corporate documents and documents relating to its business operation; (3) the NCE’s bank statements; (4) the NCE’s tax related documents and financial statements; (5) the NCE’s business plan; (6) documents relating to the sources of the petitioner’s claimed capital investment; (7) [REDACTED] Ltd.’s corporate documents; and (8) [REDACTED] Ltd.’s corporate documents.

On April 15, 2013, the director issued a request for evidence (RFE). Specifically, the director requested evidence: (1) that the petitioner's claimed capital investment had been placed at risk within the NCE; (2) that the claimed capital investment was obtained through lawful means; and (3) that the claimed capital investment would create at least 10 full-time positions for qualifying employees.

In response to the director's RFE, the petitioner filed a letter dated July 6, 2013, requesting additional time to respond to the RFE. Specifically, the letter provides, "We will try the best to get [the requested documents] within this month."

On August 19, 2013, the director denied the petition, noting that under the regulation at 8 C.F.R. § 103.2(b)(8)(iv), the United States Citizenship and Immigration Services (USCIS) may not grant the petitioner's request for additional time to respond to the RFE. In addition, the director found that the petitioner did not demonstrate: (1) that he had invested or was actively in the process of investing the required \$500,000 capital investment; (2) that the claimed capital investment came from his own lawfully obtained funds; (3) that his alleged investment in the NCE had created or would create at least 10 full-time jobs for qualifying employees, and (4) that he would engage in the management of the NCE.

On September 10, 2013, the petitioner filed an appeal, supported by the following types of evidence: (1) documents relating to the NCE's business operation; (2) the NCE's bank statements; (3) the NCE's financial statements; (4) documents relating to the sources of the petitioner's claimed capital investment; (5) documents relating to [REDACTED] and [REDACTED], Ltd.; (6) the NCE's corporate documents and tax related documents; (7) a June 3, 2013 letter from [REDACTED] (8) corporate documents relating to [REDACTED] (9) the NCE's second business plan; and (10) the NCE's promotional material.

On April 2, 2014, the AAO issued a notice of derogatory information. Specifically, the AAO advised the petitioner of inconsistent evidence relating to the amount of capital the petitioner claimed to have invested in the NCE. On May 1, 2014, the petitioner submitted an April 28, 2014 letter and the following evidence: (1) an April 21, 2014 letter from [REDACTED] Certified Public Accountant; (2) the NCE's stock certificate ledger; (3) incomplete bank documents; (4) the NCE's stock certificates; (5) the NCE's corporate minutes and resolutions; (5) online printouts from California's Department of Corporations; (6) a photograph of a building with the NCE's logo, and (7) the NCE's promotional material and sales order.

### III. ISSUES PRESENTED ON APPEAL

#### A. Capital Investment

The regulation at 8 C.F.R. § 204.6(e) defines capital and investment. The regulation at 8 C.F.R. § 204.6(j)(2) explains that a petitioner must document that he or she has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment,

will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. The regulation then lists the types of evidence the petitioner may submit to meet this requirement.

The petitioner has not met the capital investment requirements for the following reasons. First, the petitioner has provided inconsistent evidence relating to the amount of capital he claimed to have invested in the NCE and the NCE's principal business. In part 3 of the petition, the petitioner indicated that he had invested a total of \$589,750 in capital in the NCE as of September 2012, when he filed the petition. In part 4 of the petition, the petitioner explained that he made an initial investment of \$520,000 on July 21, 2011, and a second investment of \$69,750 on May 30, 2012. The petitioner filed a document entitled "Minutes of Special Meeting of Shareholders," for a May 30, 2012 meeting verifying the \$69,750 investment on that date. The petitioner stated on page 2 of his September 5, 2012 letter, which he initially filed in support of the petition, that he had borrowed \$30,250 from the NCE in April 2012, and that the May 30, 2012 wire of \$100,000 constituted his repayment of the loan and an additional investment of \$69,750. On appeal, however, the petitioner asserts on page 3 of his September 9, 2013 letter that his second capital investment was \$100,000, not \$69,750. On appeal, he makes no mention of the April 2012 \$30,250 loan the NCE made to him.

Similarly, in response to the AAO's notice of derogatory information, the petitioner makes no mention of the \$30,250 he borrowed from the NCE in April 2012 or his repayment of the loan on May 30, 2012. Instead, the petitioner submits the "Minutes of Special Meeting of Directors" for a May 30, 2012 meeting stating that on that date, the NCE received \$100,000 from the petitioner, \$69,750 of which was additional capital and \$30,250 of which was a shareholder loan. The petitioner also submits another "Minutes of Special Meeting of Directors" for an October 30, 2012 meeting stating that the NCE was unable to repay the \$30,250 loan and that the "[NCE] will receive \$30,250 . . . from [the petitioner] . . . as additional capital by October 30, 2012 in exchange for 3,025 shares." These documents, which state that the petitioner first made a \$30,250 loan to the NCE, and then either invested an additional \$30,250 in the NCE or converted his shareholder loan into additional capital, are inconsistent with the petitioner's September 5, 2012 letter, stating that \$30,250 of the \$100,000 the petitioner wired on May 30, 2012 constituted his repayment of a loan the NCE made to him in April 2012. Moreover, the Minutes of Special Meeting of Directors for May 30, 2012 are different than the Minutes of Special Meeting of Shareholders on the same date. Specifically, the minutes for the shareholder meeting the petitioner submitted initially make no mention of a \$30,250 loan either from or to the petitioner. Similarly, the Minutes of Special Meeting of Shareholders for October 30, 2012 that the petitioner submitted on appeal, are inconsistent with the Minutes of Special Meeting of Directors for the same date. Specifically, the shareholder meeting notes do not suggest that the \$30,250 in new capital was previously a loan either from or to the petitioner. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* The record does not resolve the discrepancies between the shareholder and director meeting notes for meetings held on the same dates.

Moreover, on appeal, the petitioner files an IRS tax return transcript for IRS Form 1120, U.S. Corporation Income Tax Return, Schedule L, Balance Sheet per Books, which shows that as of October 31, 2012, the NCE's common stock was \$520,000 and that loans from shareholder were \$36,516. The tax return transcript does not indicate, as the petitioner asserts, an additional investment of \$100,000, \$69,750 or \$30,250 between May 2012 and October 2012.

In addition, on appeal, the petitioner submits an October 30, 2012 "Minutes of Special Meeting of Shareholders" and an October 30, 2012 "Resolution," stating that the petitioner wired \$30,250 to the NCE and, as such, received an additional 3,025 shares of NCE's common stock. An August 5, 2013 California Department of Corporations Notice of Transaction Pursuant to Corporations Code Section 25102(f), which the petitioner filed on appeal and in response to the AAO's notice of derogatory information, lists the value of the October 30, 2012 transaction as \$3,025 under "California," and \$30,250 under "Total Offering." In its notice of derogatory information, the AAO specifically noted this inconsistency in value, along with other inconsistencies in the record, and requested that the petitioner resolve it by providing independent objective evidence. The petitioner has not referenced this inconsistency or resolved it in his response. The bank records also do not indicate that the petitioner deposited with or wired to the NCE either \$3,025 or \$30,250 between the May 30, 2012 transfer of \$100,000 and October 31, 2012. As such, the bank records do not support the October 30, 2012 "Minutes of Special Meeting of Director," the petitioner filed in response to the AAO's notice, stating that the NCE "will receive \$30,250 . . . from [the petitioner] . . . as additional capital by October 30, 2012 in exchange for 3,025 shares . . . of common stock of the [NCE]."

Additionally, the petitioner has submitted a total of three stock ledgers relating to the NCE's issuance of stock certificates. He initially filed two ledgers in support of the petition and he filed a third ledger in response to the AAO's notice of derogatory information. The first two ledgers indicate that the NCE issued stock certificate numbers 1 and 2 to the petitioner in 2010. The third ledger, however, indicates that the NCE issued stock certificate number 1 in July 2011 and stock certificate number 2 in May 2012.

Furthermore, according to an IRS Form SS-4, initially filed in support of the petition, the NCE's principal business is wholesale of housewares. On appeal, the petitioner files a business plan which includes presentation slides relating to the manufacturing process of wire household products. In its notice of derogatory information, the AAO pointed out that the petitioner submitted a November 24, 2010 Commercial Lease Agreement indicating that the petitioner and [REDACTED] leased a property for the sole use of "Import and export business by [REDACTED]" In response to the AAO's notice, the petitioner asserts that "[REDACTED] is the vice president/secretary for the [NCE]. The submitted leased agreement contained both [the] NCE['s] name and [REDACTED] It is used for [the] NCE's investment business. It is nothing related personal at all." While the issue was whether the lease allowed for manufacturing activities, a review of the presentation slides reveals that they may reference manufacturing activities in Hong Kong. If true, there is no inconsistency between those slides and the lease.

The petitioner has provided inconsistent evidence relating to the total amount of his claimed capital investment. "[I]t is incumbent upon [him] to resolve the inconsistencies by independent objective

evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.” *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has provided insufficient evidence to explain or reconcile the inconsistent evidence.

Second, the petitioner has not shown that at the time he filed his petition in September 2012, he placed at least \$500,000 at risk for the purpose of generating a return on the capital. The bank statements for the NCE’s account ending in 9001 show that the NCE received a \$520,000 wire from [REDACTED] Ltd. on July 8, 2011; received a \$520,000 wire from the petitioner on July 21, 2011; and sent a \$520,000 wire to [REDACTED] on July 28, 2011. In page 2 of his September 9, 2013 letter, filed on appeal, the petitioner asserts that the July 8, 2011 wire “is an error of transfer that [the p]etitioner lacked the knowledge of immigrant processing that the capital of investment should be personal activities; this money has been wired back already.” The evidence in the record does not support the petitioner’s assertion. Specifically, the bank statements do not establish that the NCE returned \$520,000 to [REDACTED] Ltd. Rather, the July 2011 bank statement shows that the NCE wired \$520,000 to [REDACTED] on July 28, 2011. In response to the April 22, 2014 notice of derogatory information, the petitioner states “[a]lthough NCE refund [sic] the money to [REDACTED] it is neither related to this petition nor against rule of tax law, also [the petitioner] is the major shareholder and decision maker of [REDACTED] and [REDACTED]” The petitioner’s explanation does not show whether the NCE’s July 28, 2011 \$520,000 wire to “[REDACTED]” is a refund of the \$520,000 from [REDACTED] Ltd. or a refund of the \$520,000 from the petitioner. Notably, [REDACTED] Ltd. is the entity that agreed to pass along the petitioner’s funds to the NCE.

Additionally, as noted in the AAO’s notice of derogatory information, according to information provided on the California Department of Corporations website, <http://134.186.208.233/caeasi/pub/exsearch.htm>, accessed on March 18, 2014 and incorporated into the record of proceeding, the NCE filed a number of Notices of Transaction Pursuant to Corporations Code Section 25102(f), including two that are dated June 14, 2012 and June 16, 2012, respectively. Both notices relate to common stock valued at \$520,000 and list the “date of first sale” as July 11, 2011, which is after the NCE’s receipt of \$520,000 from [REDACTED] Ltd., but before the NCE’s receipt of \$520,000 from the petitioner.

In response to the AAO’s notice of derogatory information, the petitioner submits a July 26, 2011 “Minutes of the Director’s Meeting,” stating that the petitioner “made a decision and agreed on the remittance of US\$520,000.00 from [the NCE] to [REDACTED]” The petitioner also submits an April 21, 2014 letter from Mr. [REDACTED] stating that the NCE’s stock certificate no. 1 “was recorded twice by the Department of Corporation (DOC) on 6-14-2012 and 6-16-2012. Subsequently, DOC cancelled one transaction and refunded us the duplicated recording fee.” These documents, however, are insufficient to establish whether the NCE’s July 28, 2011 \$520,000 wire to [REDACTED] constituted a refund of the \$520,000 from [REDACTED] Ltd. or a refund of the \$520,000 from the petitioner. The petitioner did not submit any bank statements or evidence demonstrating the ultimate destination of those funds; specifically, whether they remained with [REDACTED] Ltd. or whether that company forwarded them to [REDACTED]

Ltd. as would be expected if those funds were a refund of that company's investment, or another party.

Moreover, the bank statements for the NCE's account ending in 9001 show the following debits:

1. A \$10,000 check issued to (check number drawn on July 22, 2011;<sup>1</sup>
2. A \$10,000 check issued to (check number drawn on August 9, 2011;
3. A \$20,000 check (check number drawn on September 26, 2011;<sup>2</sup>
4. A \$10,000 check issued to (check number drawn on October 7, 2011;
5. A \$25,000 check issued to (check number drawn on February 9, 2012;
6. A \$2,500 check with no specified payee (check number drawn on July 2, 2012; and
7. A \$2,880 check with no specified payee (check number drawn on July 2, 2012.

The petitioner has presented insufficient evidence showing that these debits, totaling \$80,380, have been used in the NCE's business operation.

Furthermore, the NCE's bank statements show that the NCE overpaid its monthly rent from January 2012 through April 2012. Specifically, the November 24, 2010 Commercial Lease Agreement provides that the NCE's monthly rent is \$1,700 from February 1, 2011 through January 31, 2012; and \$1,750 from February 1, 2012 through January 31, 2013. The bank statements, including canceled checks, for an account ending in 9001 show that the NCE issued checks to the property owner, in the amount of \$1,700 on January 13, 2012 (check number ; \$2,620 on January 30, 2012 (check number ; \$1,700 on February 6, 2012 (check number ; \$1,750 on February 23, 2012 (check number ; \$1,700 on March 2, 2012 (check number ); \$1,750 on March 2, 2012 (check number ; \$1,700 on April 5, 2012 (check number and \$1,750 on April 5, 2012 (check number . The petitioner has provided insufficient evidence explaining the multiple monthly rent payments, or demonstrating that all the funds issued to Ms. have been used in the NCE's business operation.

Third, given that the petitioner has not established that he invested and placed at risk the initial \$520,000, his subsequent claimed investments are relevant. The petitioner claims to have made investments in the NCE after the petition filing date of September 7, 2012. In order for these investments to be permissible, the petitioner must demonstrate that any capital invested after the priority date was committed to the NCE as of that date. The petitioner must show an actual commitment as of September 7, 2012 of the claimed investment of \$30,250 in October 2012 and \$118,499.68 between November 2012 and May 2013 to demonstrate the required amount of capital was at risk at the time of filing. See 8 C.F.R. § 204.6(j)(2). The "mere intent to invest . . . will not suffice to show that the petitioner is actively in the process of investing." *Id.* An actual commitment does not exist if the petitioner's assets are not at risk. See 8 C.F.R. § 204.6(j)(2); *Matter of Hsiung*, 22 I&N Dec. 201, 204 n.5 (Assoc. Comm'r 1998). The petitioner has not documented that any of these funds was committed to or secured for the investment in the NCE as of the date of filing. Thus, these funds are not probative evidence that the petitioner invested or was actively in the process of investing the full

<sup>1</sup> According to the NCE's corporate documents, is its secretary and director.

<sup>2</sup> The payee portion of the canceled check is illegible.

investment amount as of the date of filing. The sum of these post-filing capital investments is \$148,749.68.

In light of the above, the petitioner has not demonstrated that he has invested or is actively in the process of investing the required amount of capital in the NCE. See 8 C.F.R. § 204.6(j)(2).

#### 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 burden of establishing that the funds are his own funds. *Id.*

Initially, the petitioner submitted two [REDACTED] forms in support of the petition, showing that the petitioner wired funds from an account ending in [REDACTED] to the NCE's account ending in [REDACTED]. The first document shows the petitioner wired \$520,000 to the NCE on July 21, 2011 and the second document shows the petitioner wired \$100,000 to the NCE on May 30, 2012. In his RFE, the director specifically requested evidence establishing the lawful source of the petitioner's claimed capital investment. The director stated that such evidence may include "[d]eposit slips, receipts, and transfer document tracing the path and flow of funds from the petitioner to the NCE." The petitioner did not submit any of the requested documents in response to the RFE, although he has submitted some relevant documents on appeal.

A petitioner may submit anything in support of an appeal, including new evidence; however, where a director has requested specific evidence in a request for evidence, and the petitioner did not comply with the request, that particular evidence will not be considered on appeal. Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764, 766-67 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). The petitioner's opportunity to submit the evidence was in response to the director's request for evidence. *Id.*

Even if the AAO were to consider the documents submitted on appeal, they do not establish the lawful source of the petitioner's claimed capital investments. First, the petitioner has submitted insufficient evidence showing the path of his July 2011 \$520,000 claimed capital investment. According to the Individual Loan/Guarantee Contract, the petitioner borrowed 3.38 million RMB from [REDACTED] Ltd., [REDACTED] in June 2011. The loan document provides that the lender was to make a lump-sum transfer to the petitioner's account ending in [REDACTED]. On appeal, the petitioner files an [REDACTED] Special Transfer Voucher, showing that the bank wired 3.38 million RMB on June 14, 2011 to the petitioner's account ending in [REDACTED]. The record, however, does not document the path of funds from the petitioner's RMB

account ending in [REDACTED] to his Hong Kong account ending in [REDACTED] from which he wired \$520,000 to the NCE on July 21, 2011. In fact, although a partial copy of the petitioner's deposit book, filed on appeal, verifies the June 14, 2011 wire into the account ending in [REDACTED] it shows that the next transaction in that account occurred in December 2011, after the petitioner transferred \$520,000 to the NCE from his account ending in 5833 on July 21, 2011. In another words, the evidence submitted, including evidence submitted on appeal, shows that the 3.38 million RMB remained in the petitioner's account when he claimed to have invested in the NCE in July 2011. The evidence thus does not establish that the July 2011 \$520,000 claimed capital investment derived from the petitioner's June 2011 [REDACTED] loan.

In addition, according to the loan document, the "purpose of the loan [ ] is for Operation. Without the Lender's written permission, the Borrower cannot use the loan for other purpose." The petitioner has not provided evidence showing that he could use the loan proceeds as a capital investment in the NCE.

Moreover, on appeal, the petitioner also submits a document entitled "Minutes of the Director's Meeting," indicating that the petitioner agreed to transfer 3,364,400 RMB from his personal account to [REDACTED] in exchange for its transfer of \$520,000 to the NCE. The record, however, lacks evidence, such as bank documents, showing that the petitioner wired 3,364,400 RMB to [REDACTED] before his claimed capital investment of \$520,000 in July 2011. Notably, the petitioner, not [REDACTED], wired the \$520,000 to the NCE. The record also does not contain documents demonstrating any transfers from [REDACTED] to either the NCE or the petitioner's Hong Kong account ending in [REDACTED] from which the petitioner transferred \$520,000 to the NCE on July 21, 2011.

Furthermore, the June 2011 Individual Loan/Guarantee Contract lists the petitioner's two real estate properties as collateral. The petitioner submitted evidence showing that he purchased the [REDACTED] in 2006 for 2,741,417.39 RMB. In April 2011, the value of the property was appraised at 8,084,293 RMB. The petitioner has not submitted sufficient evidence showing how the property value could have nearly tripled in five years. The petitioner has also not submitted sufficient evidence showing that he purchased the property in 2006 with funds he lawfully obtained before the purchase.

Second, the petitioner has submitted insufficient evidence showing the path of his \$100,000 claimed capital investment in May 2012. On appeal, the petitioner submits a document entitled "Minutes of the Director's Meeting," indicating that the petitioner agreed to transfer 629,000 RMB from his personal account to [REDACTED] in exchange for its transfer of \$100,000 to the NCE. The record, however, lacks evidence, such as bank documents, showing that the petitioner wired 629,000 RMB to [REDACTED] before his claimed capital investment of \$100,000 in May 2012. Notably, the petitioner, not [REDACTED], Ltd., wired the \$100,000 to the NCE. The record also does not contain documents demonstrating any transfers from [REDACTED] Ltd. to either the NCE or the petitioner's Hong Kong account ending in [REDACTED] from which the petitioner transferred \$100,000 to the NCE on May 30, 2012.

Third, the petitioner has not submitted evidence showing the path of the \$118,499.68 capital investment that he claims to have made between November 2012 and May 2013, after the filing of the petition. The NCE's bank statements for [REDACTED] show "[REDACTED] Deposit[s]" and "[REDACTED] Transfer[s] from other Acct" between November 2012 and May 2013. The petitioner has not submitted sufficient evidence, such as bank documents, showing the sources of these deposits or transfers, or that these funds originated from the petitioner. In addition, the NCE's bank statements for [REDACTED] show that there had been numerous "[REDACTED] Deposit[s]" and "[REDACTED] debit[s]" between June 2011 and July 2012; yet, the petitioner has not asserted that these transactions were also his capital investment in the NCE.

If the record does not document the complete path of the petitioner's funds, the petitioner has not met his burden of establishing that the invested funds were his own or from a lawful source. See *Matter of Izummi*, 22 I&N Dec. at 195 (citing *Matter of Soffici*, 22 I&N Dec. 158 (Assoc. Comm'r 1998).) "A petitioner must also establish, pursuant to 8 C.F.R. 204.6(e), that funds invested are his own." *Matter of Soffici*, 22 I&N Dec. at 165 n.3.

Finally, the petitioner has not submitted sufficient evidence showing his claimed capital investment in the NCE derived from funds he obtained lawfully from either [REDACTED] Ltd. or [REDACTED], Ltd. The record includes financial statements relating to [REDACTED] Ltd. and [REDACTED] Ltd., and evidence showing that the petitioner is entitled to their profits. The petitioner, however, has submitted insufficient evidence, such as bank records, showing that he has received at least \$500,000 from these businesses before his claimed capital investment in the NCE in July 2011.

In light of the above, the petitioner has not demonstrated the lawful source of his alleged investment in the NCE. See 8 C.F.R. § 204.6(j)(3).

### C. Employment Creation

The regulation at 8 C.F.R. § 204.6(j)(4)(i) lists the evidence that a petitioner must submit to document employment creation, including photocopies of relevant tax records, Form I-9s, or other similar documents for 10 qualifying employees, if such employees have already been hired following the establishment of the NCE; or a copy of a comprehensive business plan showing the need for no fewer than 10 qualifying employees. See *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). 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. *Id.* 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.* Section 203(b)(5)(D) of the Act 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."

In part 5 of the petition, the petitioner indicated that there were no employees at the time of the initial investment in July 2011 and five employees as of the date of filing in September 2012. The petitioner indicated that he would create 12 additional jobs through his additional investment in the NCE. The record includes Employee's Withholding Allowance Certificates, IRS Form W-4s; Employment Eligibility Verifications, Form I-9s; Employer's Quarterly Federal Tax Returns, IRS Form 941; and California Quarterly Contribution Return and Report of Wages, Form DE 9. None of these documents or any other documents in the record establish that the NCE has created any full-time positions for qualifying employees. Specifically, the record lacks evidence, such as payroll documents or earning statements, showing the number of hours employees work per week or that they work at least 35 hours a week. See section 203(b)(5)(D) of the Act.

As the petitioner has not submitted sufficient evidence to establish that he has already created the requisite full-time employment, the petitioner must submit a qualifying business plan. Initially, the petitioner submitted a business plan in support of the petition. The business plan provides that its purpose "is to analyze the impact and potential financial/business results of new creation of business for [the NCE] for the development and marketing of the market of housewares in the United States." The director pointed out in his decision that this business plan "lacks details and appears to be general." Specifically, it lacks a market analysis, the pertinent processes and suppliers, marketing strategy, organizational structure, personnel's experience, or projections of sales, costs and income. Thus, this business plan does not meet the requirements under the *Matter of Ho*, 22 I&N Dec. at 213, and does not constitute a comprehensive business plan.

Significantly, although the business plan provides that the NCE has hired 5 employees and will hire 12 additional employees between October 2012 and July 2013, it does not provide sufficient information about the NCE, *i.e.*, its market or its operation, such that its need for 17 full-time employees, or even 10 full-time employees, may be deemed credible. Its statement that "this new creation of business is growing, many employees are needed, and as above we named few positions, but with the increasing in sales and customer accounts that we would continually hire new employees" is conclusory and not supported by information provided in the business plan. USCIS need not accept primarily conclusory assertions. See *1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990).

In his RFE, the director specifically requested evidence that establishes the NCE would create no fewer than 10 full-time positions for qualifying employees. The director requested the petitioner to submit evidence, including "[a] copy of a comprehensive business plan showing that, due to the nature and projected size of the NCE, the need for at least 10 qualifying employees will result." The petitioner did not provide the requested documents in response to the director's RFE. The petitioner did, however, submit a second business plan on appeal.

As noted, a petitioner may submit anything in support of an appeal, including new evidence; however, where a director has requested specific evidence in a request for evidence, and the petitioner did not comply with the request, that particular evidence will not be considered on appeal. Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time

on appeal. *See Matter of Soriano*, 19 I&N Dec. at 766-67; *see also Matter of Obaigbena*, 19 I&N Dec. at 537. The petitioner's opportunity to submit the evidence was in response to the director's request for evidence. *Id.*

Regardless, the second business plan, submitted on appeal, does not establish the NCE's need for at least 10 full-time qualifying employees. Specifically, the second business plan lacks a marketing strategy, organizational structure, personnel's experience, and projections of sales, costs and income. Thus, the second business plan does not constitute a comprehensive business plan under the *Matter of Ho*, 22 I&N Dec. at 213.

In light of the above, the petitioner has not established that his alleged investment has created or will create at least 10 full-time positions for qualifying employees. *See* 8 C.F.R. § 204.6(j)(4)(i)(B).

#### D. Management of the NCE

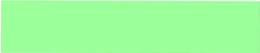
The regulation at 8 C.F.R. § 204.6(j)(5) requires the petitioner to show that he is or will be engaged in the management of the new commercial enterprise, either through the exercise of day-to-day managerial control or through policy formulation, as opposed to maintaining a purely passive role in regard to the investment.

The business plan initially filed in support of the petition provides that it is "prepared for the internal use of [the NCE] and exclusive use of [the petitioner]." The business plan, however, does not specify the petitioner's role or title in the NCE, nor does it include a complete description of the petitioner's duties in the NCE. The corporate documents the petitioner initially filed in support of the petition indicate that the petitioner is the NCE's initial agent for service of process, chief executive officer, chief financial officer and director.

In his RFE, the director specifically requested evidence relating to the petitioner's management of the NCE, including "[a] statement of the position title that the petitioner has or will have in the new enterprise and a complete description of the position's duties." The petitioner did not provide the requested documents in response to the director's RFE.

On appeal, the petitioner has provided a second business plan that discusses the petitioner's role in the NCE. The purpose of the RFE is to elicit further information that clarifies whether the petitioner has established eligibility for the benefit sought as of the filing date of the petition. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). Where the director put the petitioner on notice of a deficiency in the evidence and gave the petitioner an opportunity to respond to that deficiency, the petitioner may not offer evidence for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. at 766; *Matter of Obaigbena*, 19 I&N Dec. at 533. Under the circumstances, the sufficiency of the evidence submitted on appeal is not properly before USCIS.

In light of the above, the petitioner has not established that he is or will be engaged in the management of the NCE. *See* 8 C.F.R. § 204.6(j)(5).



#### 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.