

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: NOV 12 2014 OFFICE: IMMIGRATION 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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Chief, Immigrant Investor Program Office (IPO), denied the preference visa petition on October 2, 2013. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment creation alien pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5). The petition is based on an investment in [REDACTED] the new commercial enterprise (NCE), which wholly owns three subsidiaries: [REDACTED]

and [REDACTED]. According to the evidence in the record, including business plans: (1) [REDACTED] plans to operate an oil change and vehicle repair business; (2) [REDACTED] doing business as [REDACTED], provides hair and other beauty services; and (3) [REDACTED] owned then sold 65 percent of [REDACTED] a business that plans to manufacture [REDACTED] cargo container products. The petitioner indicated on part 2 of the petition that the NCE is not in a targeted employment area (TEA) or an upward adjustment area. Accordingly, the required amount of capital is \$1,000,000.

In his October 2, 2013 decision, the chief denied the petition, finding that the petitioner did not demonstrate that he had invested or was actively in the process of investing the required \$1,000,000 capital investment. Specifically, the chief found that the petitioner had not shown that the petitioner made or would make the required capital investment available to a job creating entity through a single commercial enterprise. For the reasons discussed below, the petitioner has not overcome the chief's sole ground for denial and has not documented that he placed all of the funds transferred to the NCE at risk. In addition, the petitioner has not established that he meets the job creation requirements. 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 BACKGROUND

The petitioner filed the petition on August 31, 2012, supported by the following types of evidence: (1) corporate and bank documents relating to [REDACTED] the petitioner's business in Afghanistan; (2) corporate and bank documents relating to the NCE; (3) documents relating to the NCE's three wholly owned subsidiaries; (4) documents relating to [REDACTED] (5) bank documents reflecting the transfer of funds into and out of the NCE and its wholly owned subsidiaries' bank accounts; (6) an undated letter from Dr. [REDACTED], relating to the petitioner's investment in the United States; and (7) 2012 business plans for [REDACTED] (Automotive business plan 1); [REDACTED] and [REDACTED]

On March 29, 2013, the Director, California Service Center, issued a Request for Evidence (RFE), requesting that the petitioner provide evidence of his capital investment in the NCE, evidence of the lawful source of the petitioner's funds, and evidence relating to employment creation. On June 21, 2013, the petitioner responded to the RFE with the following types of evidence: (1) corporate and bank documents relating to the NCE and its subsidiaries; (2) documents relating to [REDACTED] (3) documents relating to the purchase and potential development of a property located at [REDACTED] Virginia; (4) documents relating to [REDACTED] (5) a bank letter and sales contract confirming [REDACTED] interest in purchasing a property located at [REDACTED] Virginia; (6) [REDACTED] undated business plan that bears a 2012 copyright (Automotive business plan 2); and (7) a May 6, 2012 statement from [REDACTED] relating to the source of the petitioner's investment funds.

In his October 2, 2013 decision, the chief concluded that the petitioner did not show he had invested or was in the process of investing at least \$1,000,000 in the NCE or its wholly owned subsidiaries, such that the funds would be available for job creation. Specifically, the petitioner submitted evidence showing that the NCE's wholly owned subsidiary [REDACTED] invested \$500,000 in [REDACTED] and received a 65 percent membership interest. The chief concluded that because [REDACTED], is not the NCE's wholly owned subsidiary, under the definition of commercial enterprise at 8 C.F.R. 204.6(e), the \$500,000 [REDACTED] received did not constitute the petitioner's capital investment in the NCE or its wholly owned subsidiaries.

On appeal, the petitioner does not specifically challenge the chief's decision. Rather, he asserts that he has established his eligibility for the preference visa petition because he has modified the NCE's corporate structure. The petitioner explains that the NCE's wholly owned subsidiary [REDACTED] sold its membership interests in [REDACTED] and that the NCE now only has interests in three wholly owned subsidiaries: [REDACTED] rather than continuing as an investor in [REDACTED] has now sublicensed [REDACTED] s management and manufacturing rights.

On August 26, 2014, we issued a notice of intent to dismiss and make a formal finding of misrepresentation (NOID). In that notice, we advised the petitioner that: (1) neither the NCE nor any of its three wholly owned subsidiaries was authorized to conduct business; (2) the petitioner had submitted conflicting evidence relating to the business location of [REDACTED] and (3) the petitioner had submitted conflicting evidence relating to [REDACTED]'s membership interests. On September 25, 2014, the petitioner responded to our NOID with the following types of evidence: (1) a September 20, 2014 letter and supporting documents from [REDACTED], President of [REDACTED] explaining what had appeared to be conflicting business documents in the record; (2) an office lease for a property located at [REDACTED] Units 201 and 202, in [REDACTED] Virginia; (3) evidence that the NCE and its wholly owned subsidiaries could now operate in Virginia; (4) documents relating to [REDACTED] (5) membership certificates of [REDACTED] and [REDACTED] and (6) documents relating to the ownership of the property located at [REDACTED] Virginia. Based on the new evidence, we will not enter a finding of material misrepresentation. We will, however, dismiss the appeal based on reasons stated in this decision.

### III. ISSUES ON APPEAL

#### A. Commercial Enterprise and Capital Investment

Under the regulation at 8 C.F.R. § 204.6(e), a commercial enterprise includes “a commercial enterprise consisting of a holding company and its wholly-owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business.” The regulation at 8 C.F.R. § 204.6(e) also provides that to invest “means to contribute capital” to the new commercial enterprise. 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 has invested or is actively in the process of investing. The petitioner must show actual commitment of the required amount of capital. The regulation then lists the types of evidence the petitioner may submit to meet this requirement.

Even if a petitioner transfers the requisite amount of money, he must establish that he placed his own capital at risk. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1042 (E.D. Calif. 2001) (citing *Matter of Ho*, 22 I&N Dec. 206, 209 (Assoc. Comm’r 1998)). Before it can be said that capital made available to a commercial enterprise has been placed at risk, a petitioner must present some evidence of the actual undertaking of business activity; otherwise, no assurance exists that the funds will in fact be used to carry out the business of the commercial enterprise. *Matter of Ho*, 22 I&N Dec. at 210.

#### 1. Director’s Basis of Denial

The petitioner initially asserted that he invested at least \$1,000,000 in the NCE, which then invested \$500,000 in [REDACTED] a wholly owned subsidiary of the NCE. According to the

petitioner, in August 2012, [REDACTED] invested \$500,000 in [REDACTED] and purchased a 65 percent membership interest. On appeal, the petitioner does not challenge the director's finding that [REDACTED] is not a wholly owned subsidiary of the NCE. Accordingly, the petitioner does not contest the director's conclusion, based on the record before him, that the petitioner's \$500,000, which [REDACTED] ultimately invested in [REDACTED], does not constitute the petitioner's investment in the NCE made available for job creation at the NCE. See 8 C.F.R. § 204.6(e) (definition of commercial enterprise).

Instead, on appeal, the petitioner asserts that after he filed his petition in August 2012 and subsequent to the director's denial of the petition, "the petitioner has modified the corporate structure in accordance with the definition of commercial enterprise, the holding company and its subsidiaries regulation [sic]." On appeal, the petitioner submits an August 24, 2013 Sale of Shares Agreement, indicating that [REDACTED] sold its [REDACTED] membership interests to [REDACTED] "in exchange for [REDACTED] entering into a Management & Manufacturing Agreement with the Company [REDACTED] for the rights to manufacture the Company's products in Virginia." The petitioner also submits an August 30, 2013 Management & Manufacturing Licensing Agreement, indicating that [REDACTED] grants [REDACTED] "a license to manufacture [REDACTED] products and manage operations for such manufacturing operations on its proposed site in [REDACTED], Virginia with [the] sale of the products to be handled by [REDACTED] through its agreement with [REDACTED]"

The evidence does not establish that the NCE invested or was in the process of investing \$500,000 in [REDACTED] in accordance with [REDACTED] operating agreement at the time of filing. At the outset, the petitioner must demonstrate eligibility for the visa petition at the time of filing. See 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The petitioner cannot secure a priority date based on the anticipation of meeting the visa petition eligibility in the future. See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (adopting *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.") The restructuring of the relationship between [REDACTED] is material to the petitioner's eligibility as it pertains to whether the petitioner put at risk, and made available for job creation, the funds he purportedly transferred to [REDACTED]. As such, the modification to the NCE and its subsidiaries' corporate structure that postdates the filing of the petition in August 2012 does not establish the petitioner's eligibility for the visa at the time of filing. For this reason alone, we may dismiss the appeal. Moreover, the petitioner has not documented that he has placed the full amount he transferred to the NCE at risk.

2. [REDACTED] (NCE)

The petitioner has not shown that he has invested or is in the process of investing \$1,000,000 in the NCE, a holding company with three wholly owned subsidiaries. Specifically, the bank statements do not show that the petitioner has made the funds available to the NCE for purposes of job creation. The NCE's bank statements for an account ending in 7529 shows four incoming wires in April and May 2012, totaling \$1,059,567.63. The petitioner asserts that the funds are his capital investment in the NCE. The bank statements also show that between May 2012 and January 2013, the account had the following outgoing transfers: four transfers totaling \$400,000 to an account ending in 7079; a \$25,000 transfer to an account ending in 7991 and a \$45,000 transfer to an account ending in 8548. The petitioner has not submitted evidence showing that these transfers totaling \$470,000 constitute the NCE's legitimate business expenses. The cover letter for the RFE response asserts that the payments to account 7079 are "wire payments for Technology Licensing Fees and Services Fees." The cover letter then references four invoices from [REDACTED] for \$100,000 each (two of which bear a "paid" stamp). [REDACTED] issued the invoices to [REDACTED] the petitioner's foreign company, and they indicate that the payee should wire the payments to a [REDACTED] account ending in 8242 rather than an account ending in 7079. [REDACTED] President of [REDACTED], confirms receiving \$100,000 directly from the petitioner's overseas account. As such, while Mr. [REDACTED] letter confirms an additional \$100,000 from the petitioner beyond the transfers directly to the NCE, it remains that the record does not explain the \$400,000 the NCE transferred to the account ending in 7079. As such, the petitioner has not shown that he has invested or is in the process of investing at least \$1,000,000 in the NCE or has placed at least \$1,000,000 at risk for the purpose of generating a return. See 8 C.F.R. § 204.6(j)(2).

In addition, the petitioner has not shown that the NCE has invested or is in the process of investing in its wholly owned subsidiaries, in accordance with each subsidiary's respective operation agreement.

3. [REDACTED]

Even if we consider the corporate structure modification such that [REDACTED] has not invested in a non-wholly owned subsidiary, the petitioner has not established that he has placed at risk the \$500,000 claims the NCE has invested in [REDACTED]. First, the petitioner has not presented sufficient evidence showing that [REDACTED] had undertaken any actual business activities such that the petitioner's \$500,000 claimed capital investment may be considered at risk as of the date of filing. *Matter of Ho*, 22 I&N Dec. at 210, states:

Before it can be said that capital made available to a commercial enterprise has been placed at risk, a petitioner must present some evidence of the actual undertaking of business activity; otherwise, no assurance exists that the funds will in fact be used to carry out the business of the commercial enterprise. This petitioner's *de minimis* action of signing a lease agreement, without more, is not enough.

That case concludes: “Simply formulating an idea for future business activity, without taking meaningful concrete action, is similarly insufficient for a petitioner to meet the at-risk requirement.” *Id.* The evidence in the record documents the following events: (1) in August 2012, [REDACTED] purchased a 65 percent membership interest in [REDACTED] (2) on August 24, 2013, [REDACTED] sold its membership interests to Mr. [REDACTED] “in exchange for [ ] entering into a Management & Manufacturing Agreement” with [REDACTED] and (3) on August 30, 2013, [REDACTED] entered into a Management & Manufacturing Licensing Agreement with [REDACTED]. Other than purchasing shares in [REDACTED] the petitioner has not presented any evidence of [REDACTED] undertaking any actual business activities as of the date of filing.

Second, the petitioner has not demonstrated that the \$500,000 is currently at risk. Specifically, the petitioner has not resolved how the \$500,000 is currently at risk for purposes of job creation within the NCE. The Sale of Shares Agreement and Management & Manufacturing Licensing Agreement do not specify how the original \$500,000 claimed investment now relates to [REDACTED] business operations. For example, the agreements do not specify that [REDACTED] is converting the \$500,000 to a sublicensing fee that allows [REDACTED] to manufacture cargo containers with direct employees.

Moreover, even on appeal, the petitioner has submitted no evidence showing that [REDACTED] has leased or purchased, or is in the process of leasing or purchasing, a space, equipment or materials needed for the proposed manufacturing operation, or evidence showing it has hired or is in the process of hiring staff to run the proposed manufacturing operation. At most, the petitioner has shown his and the NCE’s prospective investment arrangements entailing no present commitment, which are not sufficient to show that the petitioner has placed his \$500,000 claimed capital investment at risk. *See* 8 C.F.R. § 204.6(j)(2). Simply formulating an idea for future business activity, without taking meaningful concrete action, is similarly insufficient for a petitioner to meet the at-risk requirement. *Matter of Ho*, 22 I&N Dec. at 210.

Third, the bank documents do not establish that the NCE has invested or is in the process of investing \$500,000 in [REDACTED]. The record includes no evidence of a bank account belonging to [REDACTED]. Instead, the petitioner has submitted bank statements for an account ending in 9550 belonging to “[the NCE], [REDACTED]” In response to the director’s RFE, the petitioner submitted [REDACTED] Account’s bank statements from May 2012 through May 2013, showing that the account balance ranged between \$25,000 in May 2012 and \$6,437.50 in May 2013, with only a single \$25,000 deposit from the NCE on May 23, 2012. Assuming *arguendo* that this account belongs to [REDACTED] the bank statements in the record do not support the petitioner’s claim on appeal that the NCE or “[t]he petitioner has invested \$500,000 in [REDACTED] which has been used to purchase 65% of the [REDACTED]” Other than the one-time transfer of \$25,000 on May 23, 2012 from the NCE’s account ending in 7529 to the account ending in 9550, the bank statements in the record do not show that either the NCE or the petitioner has made any additional deposits into the account ending in 9550.

According to an undated letter from Dr. [REDACTED] a letter that the petitioner initially filed in support of the petition, the petitioner and the NCE transferred a total of \$200,000 to [REDACTED] “for license and service fees in accordance to the agreement reached between [REDACTED] and [REDACTED]”<sup>1</sup> Dr. [REDACTED] asserts that the petitioner transferred \$100,000 from his overseas account and \$100,000 from “the [REDACTED] account.” As discussed above, there are several [REDACTED]’ accounts. The [REDACTED] Account does not contain a \$100,000 debit. Regardless, the record continues to lack evidence of the remaining \$275,000 after the \$200,000 the petitioner and, purportedly, the NCE transferred to [REDACTED] and the \$25,000 the NCE transferred to the [REDACTED] account ending in 9550.

#### 4. Revival Automotive Services, LLC

The petitioner has not shown that the NCE has invested or is in the process of investing \$300,000 in [REDACTED] in accordance with [REDACTED] Operating Agreement. Specifically, the bank documents do not support the NCE’s claimed investment of \$300,000 in [REDACTED] In response to the director’s RFE, the petitioner submitted [REDACTED] May 2012 through May 2013 bank statements for an account ending in 9534. The bank statements show that the account received a total of \$182,000 from the NCE. Specifically, it received a \$25,000 transfer in May 2012; a \$25,000 transfer in July \$25,000; a \$100,000 transfer in November 2012 and a \$32,000 transfer in November 2012. The bank statements do not support a claimed investment of \$300,000.

Moreover, the petitioner has not shown that he placed at risk the NCE’s \$300,000 claimed capital investment in [REDACTED] See 8 C.F.R. § 204.6(j)(2). Specifically, the petitioner has not presented sufficient evidence showing that the [REDACTED] has undertaken any actual business activities such that the full \$300,000 claimed capital investment may be considered at risk. See *Matter of Ho*, 22 I&N Dec. at 210. The evidence in the record shows that in November 2012, the [REDACTED] paid a \$141,511.12 down payment for the purchase of a property located at [REDACTED], Virginia. In response to our NOID, the petitioner states that although it paid the down payment, [REDACTED] has never owned the property due to financing issues. Instead, the petitioner, Dr. [REDACTED] and Mr. [REDACTED] have owned the property since its purchase in November 2012. The projected start-up costs in Automotive business plan 1, page 5, provide for lease payments, suggesting any payments towards the purchase of property are not at risk for the job creating enterprise. The record includes reports from [REDACTED] relating to plans to develop the property. Automotive business plan 1, however, projects only \$80,000 in projected startup costs and the three-year pro forma profit/loss statement projects a net profit of \$33,429 in the first year. Funds invested in a grossly overcapitalized company with no capital expenditures forecasted are not at risk. See *Al Humaid v. Roark*, 2010 WL 308750 (N. D. Tex. Jan. 26, 2010). As such, the petitioner has not shown that the NCE has invested or is in the process of investing \$300,000 in [REDACTED] or that the petitioner has

<sup>1</sup> The petitioner asserts that [REDACTED] assisted him in his investment in the United States.

placed \$300,000 at risk to generate a profit. See 8 C.F.R. § 204.6(j)(2); *Matter of Ho*, 22 I&N Dec. at 210.

#### 5. Revival Beauty Services, LLC

The petitioner has not shown that the NCE has invested or is in the process of investing \$200,000 in [REDACTED] in accordance with [REDACTED] Operating Agreement. The bank documents do not support the NCE's claimed investment of \$200,000 in [REDACTED]. In response to the director's RFE, the petitioner submitted [REDACTED] s May 2012 through May 2013 bank statements for an account ending in 9547. The bank statements show that from its account ending in 7529, the NCE transferred \$200,000 to [REDACTED] on May 23, 2012. [REDACTED] s bank statements also show an outgoing wire of \$100,000 to [REDACTED] a few days later, on May 29, 2012. The petitioner has not provided information on the purpose of the outgoing wire or established that the outgoing funds constitute [REDACTED] s legitimate business expenses.

In light of the above, the petitioner has not demonstrated that he has placed the required amount of capital at risk in the NCE for purpose of generating a return or that the NCE has invested or is in the process of investing the funds in its wholly owned subsidiaries. See 8 C.F.R. § 204.6(j)(2).

#### B. 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 his investment had already created 40 full-time positions. The evidence in the record does not support the petitioner's assertion of actual employment creation and the petitioner's statements in the record contradict the assertion. In response to the director's RFE, the petitioner asserted that: (1) [REDACTED] was projected to hire seven full-time employees; (2) [REDACTED] created eight full-time positions and was projected to create two additional full-time positions within a year; and

(3) [REDACTED] was projected to create nine full-time positions through its investment in [REDACTED]. As the petitioner has not submitted sufficient evidence to establish that he has already created 10 full-time positions, the requisite full-time employment, the petitioner must submit a qualifying business plan to meet the employment creation requirements. The petitioner has submitted four business plans: two for [REDACTED] one for [REDACTED] and one for [REDACTED]. The business plans in the record do not establish the NCE or its wholly owned subsidiaries' need for no fewer than 10 full-time employees.

First, the petitioner has not submitted a business plan showing that [REDACTED] will create any full-time positions. The petitioner has submitted a business plan for [REDACTED] in which [REDACTED] had owned a 65 percent membership interest until August 2013. As [REDACTED] is not a wholly owned subsidiary of the NCE, the petitioner cannot count any jobs with that entity as the NCE's employment creation. See 8 C.F.R. § 204.6(e) (definition of commercial enterprise). While the petitioner has now documented that [REDACTED] has subleased [REDACTED] the new documents do not claim or establish that [REDACTED] will now follow the business plan for [REDACTED] and create the same number of jobs directly at the NCE.

Second, the petitioner has not submitted a comprehensive business plan for [REDACTED]. The petitioner has submitted two business plans for [REDACTED]. Automotive business plan 1 provides inconsistent information relating to how many employees [REDACTED] will hire in its first year of operation. According to page 1 of the business plan, [REDACTED] will hire at least 10 individuals in its first year of operation. According to the personnel summary on page 10 of the business plan, [REDACTED] will hire seven full-time employees – a manager, an assistant manager, four technicians or assistants and an administrative employee – and a part-time bookkeeper during the first year of its operation. Page 10 of the business plan also includes a corporate organization chart that lists at least one position – “Sales – Marketing” – that does not appear in the personnel summary. The petitioner has provided inconsistent information relating to the number of positions [REDACTED] will create, and “it is incumbent upon [him] to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.” *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has provided no such evidence to explain or reconcile the inconsistent evidence. Moreover, the business plan does not include information pertaining to the licenses and permits required to operate an automotive oil change and repair operation, the personnel's experience or job descriptions. See *Matter of Ho*, 22 I&N Dec. at 213. As such, Automotive business plan 1 is not a comprehensive business plan and does not establish that the petitioner meets the employment creation requirements.

Automotive business plan 2, page 1, provides that [REDACTED] “will employ at least 7 individuals in full-time positions and 1 part-time position.” This business plan provides no other information relating to employment creation, including information relating to organizational structure, personnel's experience, timetable for hiring, or job descriptions. The business plan also

lacks information pertaining to the license and permits required for the business. *See Matter of Ho*, 22 I&N Dec. at 213. As such, the second business plan is also not a comprehensive business plan and does not establish that the petitioner meets the employment creation requirements.

Third, the petitioner has not submitted a comprehensive business plan for [REDACTED]. The business plan includes a personnel plan on page 11. The personnel plan indicates that [REDACTED] will hire [REDACTED] as its business manager, a marketing and public relations assistant, a salon manager/stylist, a receptionist, five stylists, two shampoo girls, two threaders and two freelance make-up artists. The business plan does not indicate if these individuals will be employees of the business or independent contractors, or if any of them will work at least 35 hours a week. Except for Ms. [REDACTED] the business plan does not include information on the personnel's experience, a timetable for hiring or job descriptions. *See Matter of Ho*, 22 I&N Dec. at 213. As such, the business plan is not a comprehensive business plan.

Moreover, the evidence in the record does not support the petitioner's assertion in his RFE response that [REDACTED] has already created eight full-time positions. The petitioner explained, "the number of hours that have been worked since the opening of the [business] location through May 29, 2013 is 5,583.65 hours. Based upon a total of 40 weeks and 35 hours/week, this represents at least 8 full-time jobs created." The petitioner's calculation potentially counts combinations of part-time positions as full-time positions, which is impermissible under the regulation.<sup>2</sup> Indeed, a review of Employee Earnings Record that the petitioner submitted in response to the RFE shows that many of the employees did not work at least 35 hours each week, including [REDACTED]. A chart entitled "Employee Hours Worked: Pay Period 1/23 – 5/29/13," indicates that [REDACTED] and [REDACTED] also did not consistently worked at least 35 hours a week. The petitioner has not submitted any evidence showing that these employees shared any full-time positions through a job sharing arrangement.

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).

#### 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 a visa petition proceeding, 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, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

<sup>2</sup> The regulation at 8 C.F.R. § 204.6(e) provides, "Full-time employment means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week . . . . A job-sharing arrangement whereby two or more qualifying employees share a full-time position shall count as full-time employment provided the hourly requirement per week is met. This definition shall not include combinations of part-time positions even if, when combined, such positions meet the hourly requirement per week."