U.S. Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529

U.S. Citizenship and Immigration Services

HQPRD 70/6.1.8-P
AD06-04

Interoffice Memorandum

To: REGIONAL DIRECTORS
SERVICE CENTER DIRECTORS
DISTRICT DIRECTORS
OFFICERS IN CHARGE

From: Michael Aytes
Acting Associate Director, Domestic Operations

Date: November 23, 2005

Re: Handling of N-400s filed by Alien Entrepreneurs with Pending I-829s
Addition to *Adjudicator's Field Manual (AFM)* Chapter 22
(*AFM* Update AD06-04)

This memorandum provides guidance to U.S. Citizenship and Immigration Services (USCIS) officers in the field regarding adjudication of the Form N-400, Application for Naturalization, filed by a conditional resident (CR) who has a pending Form I-829, Petition by Entrepreneur to Remove Conditions.

This guidance is effective immediately. Please direct any questions regarding this memorandum through appropriate channels.

Handling of N-400 filed by Alien Entrepreneurs with Pending I-829s
Addition to *Adjudicator's Field Manual (AFM)* Chapter 22
(*AFM* Update AD06-04)

Chapter 22 of the AFM does not currently contain guidance on the adjudication of Form N-400, Application for Naturalization, filed by alien entrepreneurs in conditional resident status (CR) with a pending Form I-829, Petition by Entrepreneur to Remove Conditions. Chapter 22 has been revised to add a new sub-chapter, 22.4(i).

Accordingly, the AFM is revised as follows:

(i) General. (Added [date of signature], AFM AD06-04.) This guidance applies only to alien entrepreneurs in conditional resident status (CR) with a pending Form I-829, Petition by Entrepreneur to Remove Conditions, who have filed a Form N-400, Application for Naturalization. These CRs will have one of the following EB-5 classification codes: N51-N58, T51-T53, T56-T58, I51-I53, I56-I58, C51-C53, C56-C58, R51-R53, or R56-R58. The E51- E58 classification codes are given once the conditions are removed.

> **NOTE 1:** If a CR has a status in the "N" series the District Adjudications Officer (DAO) should first check the U.S. Department of Justice Executive Office for Immigration Review (EOIR) system to see if the person has been ordered removed by the IJ and then follow the March 3, 2000 EB-5 Field Memo Number 9: Form I-829 Processing and the January 18, 2005 Memo on Extension of Status for Conditional Residents with Pending or Denied Form I-829 Petitions Subject to Public Law 107-273.
>
> **NOTE 2:** If a DAO checks the Central Index System (CIS) history and only sees an E51-E58 classification without the alien previously having a conditional classification (i.e. C51-C58, T51-T58, I51-I58, R51-R58), the DAO should then check the A-file to determine if there was a classification error at the time of admission or adjustment or if the error was a CIS update error. This issue must be resolved before moving forward on the adjudication of the Form N-400.

Except as otherwise specifically provided, no person shall be naturalized unless he or she has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of the Immigration and Nationality Act (the "Act"). See section 318 of the Act. A person may not be naturalized if his or her residence status is subject to any conditions. DAOs conducting naturalization examinations based on T-files, or even A-files, must ensure that applicants are in fact lawful permanent residents (LPR) not subject to conditions.

(1) Eligibility to file for naturalization while a Form I-829 is pending. A CR who has timely filed Form I-829 may submit a Form N-400 prior to the adjudication of the Form I-829. The regulations at 8 CFR 216.1 clearly state that CRs have the right to apply for naturalization. Thus, a CR may file a Form N-400 whether the Form I-829 filed by the CR has been adjudicated.

(2) The 21st Century Department of Justice Appropriations Authorization Act, Public Law 107-273 (P.L. 107-273). There are two categories of EB-5 cases: a group of approximately 800 cases that are subject to procedures and standards set forth in P.L. 107-273 and all others (which are adjudicated under standard EB-5 procedures). P.L. 107-273 applies to certain alien entrepreneur applications where the Form I-526, Immigrant Petition by Alien Entrepreneur, was approved after January 1, 1995 and prior to August 31, 1998, and the Form I-829 was timely filed prior to November 2, 2002 (even if the Form I-829 had been denied before November 2, 2002, if a motion to reopen was filed before January 2, 2003). The Public Law states that USCIS cannot deny any of these applications until implementing regulations have been published. As a result, these cases generally must remain pending until the regulations are published and USCIS commences its review of them pursuant to such regulations.

The California Service Center (CSC) will no longer de-schedule in Claims 4 the examination of naturalization applicants who are alien entrepreneur CRs subject to P.L. 107-273. As such, as of the date of this memorandum, these applications may only proceed to examination, subject to the procedures described below.

(3) Adjudicating the Form N-400 if the Form I-829 is pending. A DAO who is conducting the examination of a naturalization applicant who was admitted as a CR, based on the approval of a Form I-526 and who subsequently timely filed Form I-829, should ascertain the current status of the Form I-829 prior to proceeding with a final adjudication of the Form N-400. A Form N-400 shall not be approved under any circumstances prior to the adjudication of a pending Form I-829 and the removal of conditions on the CR's status, unless the applicant has obtained LPR status through another avenue or is eligible to naturalize based on military service under section 329 of the Act.

(A) Form N-400 filed with a pending Form I-829 where the applicant has since obtained LPR status on other grounds (applies to all EB-5 cases, including P.L. 107-273 cases). If a Form I-829 is pending at the time of the CR's examination on the Form N-400, but the applicant was admitted as an LPR on other grounds (e.g., marriage to U.S. citizen qualifying), thereby rendering the Form I-829 moot, only then may the DAO proceed with the naturalization examination. If the applicant demonstrates eligibility for naturalization, including the requirement in Section 318 of the Act that the applicant has been admitted as an LPR, the DAO must obtain a written withdrawal of the Form I-829 from the applicant. Such withdrawal should be annotated in MFAS and a copy of the written withdrawal interfiled with the Form I-829. In addition, the DAO should notify the appropriate Service Center EB-5 point-of-contact of the withdrawal by contacting the California Service Center or the Texas Service Center as appropriate, and by

faxing a copy of the withdrawal to the relevant Service Center (CSC: 949-389-8027 and TSC: 214-489-8017). These procedures apply to all EB-5 cases, including those subject to P.L. 107-273.

(B) Form N-400 filed with a pending Form I-829 where the applicant has not obtained LPR status on other grounds.

i. Applications subject to P.L. 107-273.

1. Which applications are subject to P.L.107-273?

Applications by alien entrepreneur CRs are subject to P.L. 107-273 if the Form I-526 was approved after January 1, 1995 and prior to August 31, 1998, and the Form I-829 was timely filed prior to November 2, 2002 (even if the Form I-829 had been denied before November 2, 2002, if a motion to reopen was filed before January 2, 2003).

2. Guidance for handling applications subject to P.L. 107-273:

The DAO may conduct the naturalization examination. However, if the applicant is still a CR, the DAO should deny the application on the basis of section 318 of the Act (as well as on any other applicable ground). Before taking final action on the application, the DAO should confirm that the case is subject to P.L. 107-273 by contacting the Investor and Regional Center Unit (IRCU), Headquarters for further instructions. The IRCU will coordinate any action with the relevant Service Center EB-5 point-of-contact.

ii. Applications not subject to P.L. 107-273.

The DAO may conduct the naturalization examination, but must contact the Service Center with jurisdiction over the Form I-829 before taking any final action.

Only officers fully trained in EB-5 law, procedures, and the relevant precedent decisions may adjudicate Forms I-829. As a result, the DAO conducting the naturalization examination shall not attempt to adjudicate the Form I-829, but instead must contact the appropriate Service Center or Regional office EB-5 point-of-contact to obtain adjudication of the Form I-829 before proceeding with a determination on the N-400.

Once the Form I-829 is adjudicated, including the appropriate update in MFAS, the DAO may proceed with the adjudication of the Form N-400. If

the Service Center approves the Form I-829, the Service Center will update MFAS. If the Form I-829 is approved, the form N-400 may be granted if the applicant is otherwise eligible for naturalization.

If the Form I-829 is denied, the Form N-400 must be denied on the basis of Section 318 of the Act because the applicant's resident status remains subject to conditions. The Service Center will then send the A file to the district office, as designated by the district EB-5 POC, for the issuance of the denial and the MFAS update.

U.S. Department of Justice
Immigration and Naturalization Service

HQ40/6.1.3

425 I Street NW
Washington, DC 20536

JUN 10 2003

MEMORANDUM FOR: SERVICE CENTER DIRECTORS
BCIS FIELD OFFICE DIRECTORS
DIRECTOR, NATIONAL BENEFITS CENTER

FROM: William R. Yates
Acting Associate Director for Operations
Bureau of Citizenship and Immigration Services
Department of Homeland Security

SUBJECT: Amendments Affecting Adjudication of Petitions for Alien Entrepreneur (EB-5)

The purpose of this memorandum is to provide interim guidance on certain changes affecting the adjudication of Form I-526, Immigrant Petition by Alien Entrepreneur, and Form I-829, Petition by Alien Entrepreneur to Remove Conditions, that were pending or filed on or after November 2, 2002. On November 2, 2002, the President signed into law the Twenty-First Century Department of Justice Appropriations Authorization Act (Public Law 107-273), which, among other things, mandated a review of cases in which the alien entrepreneur filed a Form I-526 petition that was approved after January 1, 1995 and prior to August 31, 1998, and timely filed an I-829 petition prior to November 2, 2002.

In addition to cases described above, the new law also affects the adjudication of Form I-526 petitions pending or filed on or after November 2, 2002, the date on which the law was enacted. Changes brought about by the new law include the following:

1. Chapter 2, section 11036 of Public Law 107-273, (Subtitle B) amends the law at sections 203(b)(5) and 216A of the Immigration and Nationality Act (INA) so that an alien entrepreneur is no longer required to establish a commercial enterprise.

This modifies 8 CFR § 204.6(h)(l), regarding the creation of an original business. Adjudicators, however, should still inquire as to whether the petitioner personally established the commercial enterprise because if not, then the adjudicator must inquire as to the number of jobs at the time the petitioner acquired the business since petitioner still has to create 10 new jobs.

2. In addition, the new law did not remove the requirement that the commercial enterprise be "new," as defined in 8 CFR § 204.6(e). Under this definition, an enterprise must have been established after November 29, 1990 in order to be "new". The regulations at 8 CFR 204.6(h)(3), which describe "the establishment of a new commercial enterprise", have been superceded in part by Public Law 107-273 due to the removal of the requirement that the alien entrepreneur establish the commercial enterprise. Nonetheless, this section is still relevant in that it describes under what circumstances a commercial enterprise in existence prior to November 29, 1990 will be considered to be "new" for the purposes of this law. Specifically, enterprises that have been expanded or substantially reorganized continue to meet the definition of "new" regardless of when the commercial enterprise was actually created. Accordingly:

   - A business established prior to November 29, 1990 may be considered a new commercial enterprise under 8 C.F.R. § 204.6(e) and (h) if since that date it has been expanded so that a substantial change in the net worth or number of employees has occurred. Substantial change means a 40 percent increase in either the net worth or the number of employees.

   - In addition, a commercial enterprise established prior to November 29, 1990 will be considered to be new under 8 C.F.R. § 204.6(e) and (h) if since that date it has been restructured or reorganized so that a new commercial enterprise results .

3. With respect to cases where the alien entrepreneur filed a Form I-526 petition after August 31, 1998 , the new law does not permit such an alien entrepreneur to meet the requirements for the removal of conditions by combining investments in multiple commercial enterprises. The investment of capital in only one commercial enterprise remains a requirement for these cases.

4. Section 11035 of Chapter 2 amends section 203(b)(5) of the INA to include a definition of "full-time" employment, which is defined as a position that requires at least 35 hours of service per week at any time.

5. Public Law 107-273 has not changed the definitions of qualifying employee under 8 C.F.R. § 204.6(e), which continues to mean United States citizens, aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States, not including members of the alien entrepreneur's immediate family or household employees.

6. Section 11036 of Chapter 2 amends section 216A of the INA to include "limited partnership" within the term "commercial enterprise."

Form I-526 and I-829 petitions pending or filed on or after November 2, 2002 should be adjudicated in accordance with the changes specified in this memorandum. Previous EB-5 field guidance memorandums and regulations remain in effect, barring any changes specified above. Questions regarding this memorandum may be directed through appropriate channels to Morrie Berez or Joseph Holliday in BCIS Operations.

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U.S. Department of Homeland Security
20 Massachusetts Ave
Washington, DC 20529

U.S. Citizenship and Immigration Services

HQPRD 70/6.2.8

Interoffice Memorandum

To: All Service Center Directors
Regional Directors

From: William R. Yates
Associate Director
Operations

Date: JAN 19 2005

Re: Establishment of an Investor and Regional Center Unit

PURPOSE

Effective the date of this memo, oversight for policy and regulation development, field guidance, form design, case auditing, and training regarding Regional Center adjudications and associated investor petitions within the EB-5 Investor Program, shall reside with PRD/Investor and Regional Center Unit (IRCU). Given the well documented past abuses in the alien investor program, and the complexity and sensitivity of the issues and factors relating to both Regional Centers as well as with individual alien investor cases, there is a need for effective oversight, coordination and uniform standards governing all aspects of EB-5 matters.

DISCUSSION

PRD/IRCU will maintain liaison and regularly consult with Headquarters Service Center Operations (SCOPS), Field Operations (OFO), Administrative Appeals Office (AAO), as well as with the Texas and California Service Centers with respect to the Immigrant Investor Pilot Program, Regional Centers, I-526 and I-829 alien investor petitions. In addition, PRD/IRCU will work directly with both SCOPS and the Office of Fraud Detection and National Security (FDNS) to enhance the integrity of the EB-5 program.

This action is a major step in CIS' establishment of a nationwide and coordinated adjudicative alien investor EB-5 program, which will strengthen and protect the integrity of the program while promoting the intent of Congress to encourage investment and increase employment within the United States. The IRCU's functions and responsibilities are as follows:

1. Sole adjudicative jurisdiction for Regional Center applications pursuant to the Immigrant Investor Pilot Program for purposes of approval, denial and Requests for Evidence (RFE's).

2. Monitor and follow up on the actions of approved Regional Centers to ensure compliance with the terms, scope, and conditions of their approval/designation relative to their approved business plans and indirect job creation methodologies.

4. Monitor and be responsible for the policy coordination relating to CIS wide I-526 and related I-829 Immigrant Investor cases.

5. In coordination with SCOPS, conduct quarterly evaluations and an annual analysis of Regional Center activities in terms of number of alien investors, aggregate investment capital, average value of investments per alien investor, aggregate total of direct and indirect jobs per each regional center, and review total number of alien investors petitioning through each regional center per year.

6. Coordinate with the SCOPS and FDNS, to develop program and process integrity improvements and assessments for purposes of strengthening fraud detection and preventing abuses of the program by mala fide promoters and investors.

7. In coordination with SCOPS, develop and update Executive Level Review Criteria (ELRC) for purposes of identifying and selecting I-526 and I-829 Regional Center affiliated cases to review and/or adjudicate for both audit and "special handling" to verify consistent application of applicable regulations and policies, and to provide oversight, guidance and provide priority adjudication of sensitive high visibility cases.

8. In coordination with SCOPS conduct random and focused audits and quality assurance reviews of individual and groups of both Regional Center affiliated I-526 and I-829 cases, and non-Regional Center affiliated cases, in accordance with ELRC procedures.

9. In coordination with SCOPS, conduct both Regional Center and EB-5 regulatory/policy training for CAO's and DAO's adjudicating individual EB-5 alien petitions as well as petitions affiliated with a regional center.

10. Maintains and updates the USCIS web content on the EB-5 program and Pilot Program information.

Attached is the mission and organizational structure for PRD/IRCU.

POINT OF CONTACT

For additional information and clarification of this action, please contact Thomas Cook, Director, HQPRD, at (202) 514-2685.

CC: Carlos Iturregui, HQOPS
Dominick Gentile, HQREC
Michael Aytes, HQIU
Robert Devine, HQOCC
Robert Wiemann, AAO
Terry O'Reilly, HQOFO
Don Crocetti, HQFDNS

Attachment

Attachment

Investor and Regional Center Unit Mission and Organization

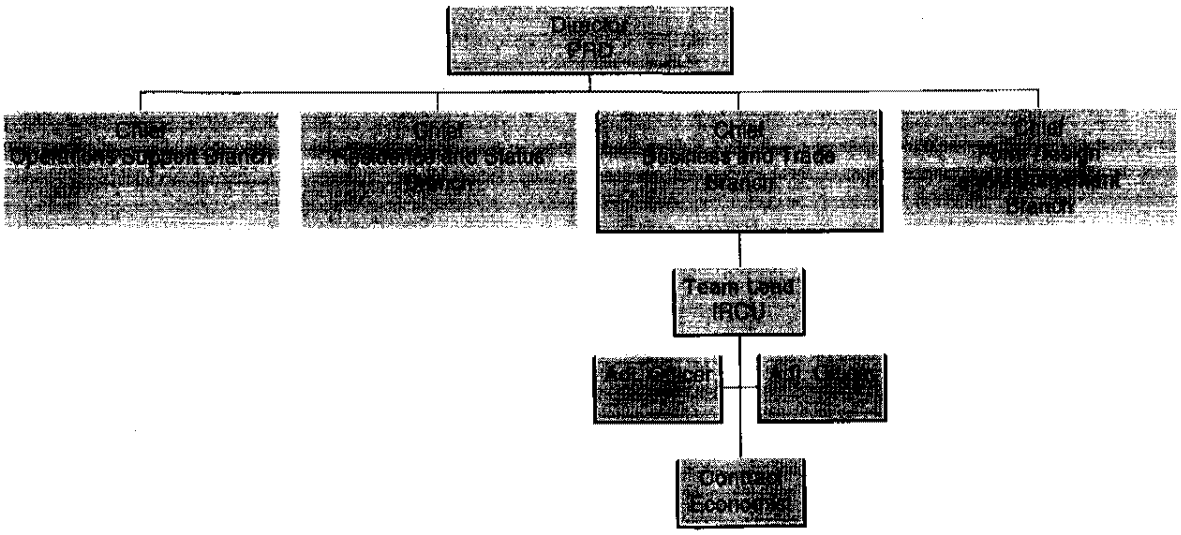
Mission:

The Investor and Regional Center Unit (IRCU) is a special project team within the Business and Trade Branch, Office of Program and Regulations Development. The new unit has oversight for all policy and regulatory development, form design and training regarding the EB-5 Program and Regional Center adjudications.

To carry out its mission, IRCU works closely with the Office of Service Center Operations (SCOPS), the California and Texas service centers, field offices, and the Department of State's Bureau of Consular Affairs in the administration of the law, and clarifying processing procedures regarding the adjudication of I-526 and related I-829 alien investor petitions. IRCU maintains liaison and works closely with SCOPS and the Office of Fraud Detection and National Security related to EB-5 and regional center program integrity, fraud detection and prevention.

IRCU provides outreach to the business community, professional associations and coordinates with DHS and other federal agencies as directed, and participates on panels and public forums about the EB-5 program, regulations, and policies.

IRCU Organizational Structure Within PRD



Memorandum

Subject	Date
Immigrant Investor (EB-5) Petitions with Certain Key Features	MAR 11 1998

To

Regional Directors
All Service Center Directors
District Directors (Including Foreign)
All Officers in Charge (Including Foreign)
All Port Directors
Directors, ODTF-Glynco, GA and Artesia, NM
Office of General Counsel
Regional and District Counsel
Administrative Appeals Office
Office of Policy and Planning
Office of Naturalization Operations
Chief of Staff
Office of Congressional Affairs
Office of Public Affairs

From

Office of Programs
(HQPGM)

The purpose of this field memorandum is to forward the attached legal memorandum and summary, advise Service Centers to hold certain petitions and prepare certifications to the Administrative Appeals Office, and alert field offices to the return to certain immigrant investor petitions by U.S. consulates abroad.

Legal Opinion

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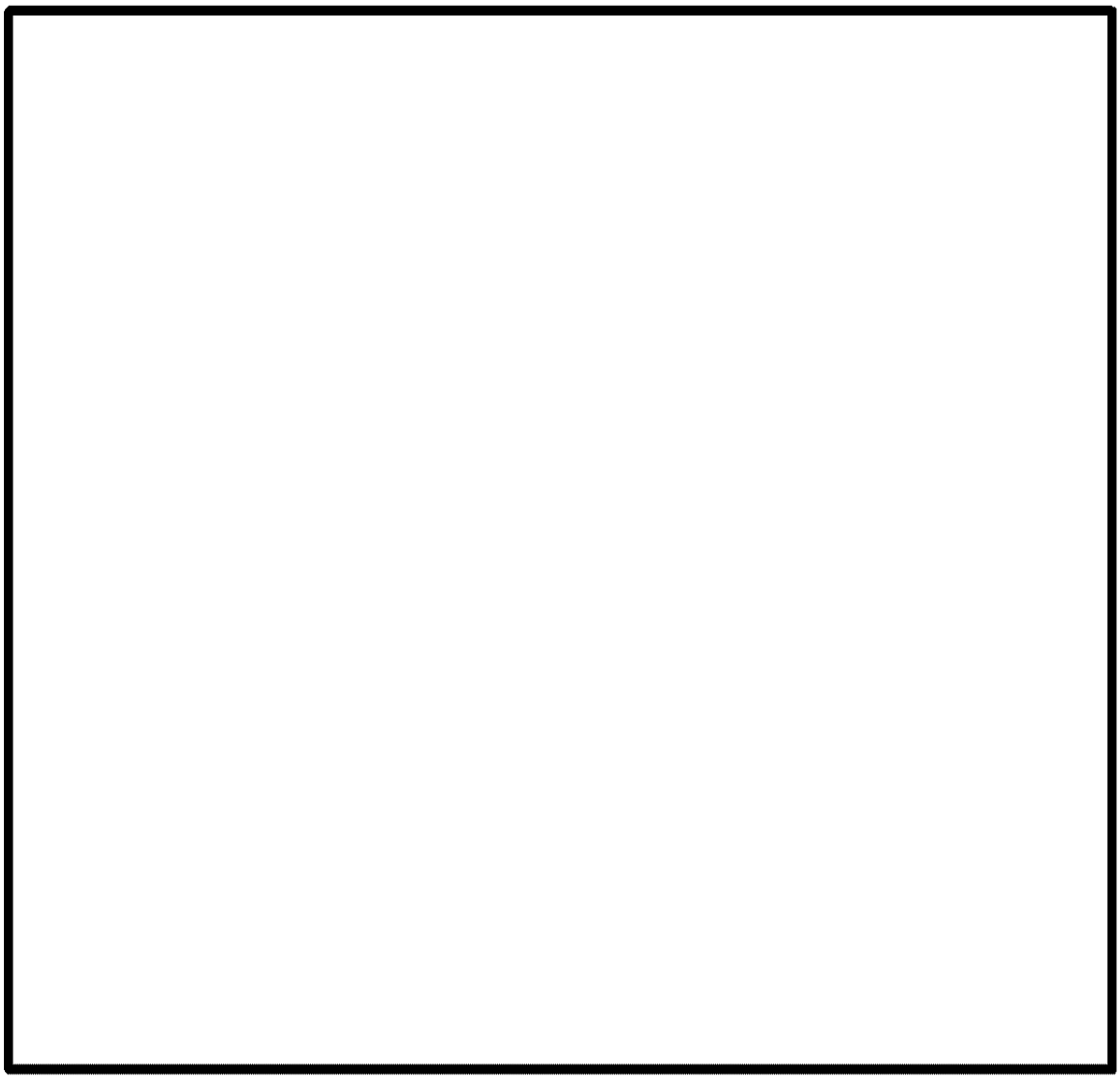


New Returns by Consulates of Investor Petitions

On February 22, 1998, the Department of State instructed that all approved Form I-526 petitions held at consular posts be returned to the appropriate Service Centers. As requested by the Service, consular officers were instructed to forward the held petitions by air courier, flagged with the name of the forwarding consulate, directly to the Business and Trade Product Line Managers along with evidence submitted by the applicant, a brief cover memorandum describing the reasons for the return, and a copy of the February 22 cable. Service Centers are instructed to track these returns by using the courier receipt numbers provided and forward to this office a list of all cases returned by the consulates for review and revocation which are subject to the hold

Communication About Petitions Subject to the Hold

All Service personnel are instructed to discontinue communication with petitioning companies (including their legal or other representatives) whose petitions are subject to the hold. Requests for communication shall be forwarded to David M. Dixon, Acting Deputy General Counsel, Headquarters INS (telephone 202-514-2895).

Preparation of Cases for Certification

Each Service Center is instructed to select approximately four Form I-526 petitions from among the held cases for certification to the Administrative Appeals Office. Decisions may be approvals or denials but should reflect, if possible, the range of provisions addressed in the legal memorandum and not isolate any one or two petitioners.

In addition, each Service Center is instructed to adjudicate two clearly approvable Form I-526 petitions not subject to the hold and prepare them for certification to the Administrative Appeals Office. Both categories of cases prepared for certification should be forwarded to the Administrative Appeals Office and clearly addressed to the attention of Edward H. Skerrett no later than two weeks from the date of this memorandum.

Your assistance is greatly appreciated. Please refer questions regarding this policy to Katharine A. Lorr, HQBEN (202) 514-5014.

Michael D. Cronin
Acting Associate Commissioner

Attachment

U.S. Department of Justice

Immigration and Naturalization Service

HQ 70/6 3

425 Eye Street N.W.
Washington, D.C. 20536

APR 30 1998

MEMORANDUM FOR Regional Directors
All Service Center Directors
All District Directors (Including Foreign)
All Officers In Charge (Including Foreign)
All Port Directors
Directors, ODTF-Glynco, GA and Artesia, NM

FROM Jacquelyn A. Bednarz
Acting Assistant Commissioner for Adjudications

SUBJECT Immigrant Investor Codes

This memorandum reviews: (1) the class of admission codes to be used by service officers upon approving employment-based fifth preference investor petitions, and (2) related data to be captured in CLAIMS

In particular, Service Center officers are asked to ensure that approved immigrant investor petitions which are based on an investment in a regional center approved under the Immigrant Investor Pilot Program are correctly identified. At this time, the Form I-526, at Part 2, does not adequately identify investments that are made in an approved regional center. Form I-526 is being revised accordingly. Until this revision occurs, however, Service officers are advised to follow the instructions below

In addition, Service Centers are advised that on November 13, 1997, an amendment to Section 610 of the Department of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993, formally changed the number of visas to be authorized annually for participation in the Immigrant Investor Pilot Program from 300 to 3,000, and extended that Program for an additional 2 years, until October 1, 2000.

I. INVESTOR CODES

The complete list of investor codes designated by the Office of Policy and Planning, Statistics Branch, is provided below. Effective immediately, please verify that any pending or future immigrant investor petition has received the proper admission code in accordance with this

list. Disregard all prior code listings forwarded by this office pertaining to these classes. A related Department of State cable is attached for your information.

Service officers are reminded that immigrant investors are aliens for whom a visa number must be requested, so that they are charged against the numerical limit (10,000) provided in section 203(b)(5) of the Immigration and Nationality Act. The approved petitions for this category must be tracked so that the Service can determine when particular caps are reached, e.g., 3,000 for investors whose investment is in a regional center approved for participation in the Immigrant Investor Pilot Program and 3,000 for investors whose investment is in a targeted area of high unemployment.

Please note that within each code group described in the chart, codes for new arrivals and adjustments distinguish between the overall investor program (regular) and the Immigrant Investor Pilot Program (Regional Center). In addition, regular and Regional Center investments are coded to specify that they are within a targeted area (of high unemployment) or not within a targeted area. Finally, when the conditions have been removed pursuant to an approved petition on Form I-829, the same code group is used for all investors, whether or not the investment is regular or Regional Center or within a targeted area or not.

The codes for principal, spouse, and child within each group are the same. The T51-T58 group is presented as an example:

New Arrivals
T51 principal
T52 spouse of T51/T56
T53 child of T51 or T56

Adjustments
T56 principal
T57 spouse of T51 or T56
T58 child of T51 or T56

Conditional Approved Form I-526	**Targeted Area** principal/spse/child	**Not Targeted Area** principal/spse/child
Regular		
New Arrivals	T51 T52 T53	C51 C52 C53
Adjustments	T56 T57 T58	C56 C57 C58
Regional Center		
New Arrivals	I51 I52 I53	R51 R52 R53
Adjustments	I56 I57 I58	R56 R57 R58
Conditions removed - LPR approved Form I-829	**Targeted Area** principal/spse/child	**Not Targeted Area** principal/spse/child
Regular and Regional Center		
New Arrivals	E51 E52 E53	E51 E52 E53
Adjustments	E56 E57 E58	E56 E57 E58

II. CLAIMS INFORMATION

This information must be captured on the petition in the block directly above the Action Block on the Form I-526 and on the CLAIMS approval screen.

For Form I-526 (Part II)

A **"Regular Investor"** is one whose investment in a new commercial enterprise creates the requisite jobs directly. If the investment is in a **"Targeted Area"** of high unemployment, the petition, and the CLAIMS approval screen, must be annotated T51 or T56. If the investment is in an area that is **"Not a Targeted Area"** the petition, and the CLAIMS approval screen, must be annotated C51 or C56.

A **"Regional Center Investor"** is one whose investment is in an approved regional center providing for indirect jobs creation. If the investment is in a **"Targeted Area"**, the petition, and the CLAIMS approval screen, must be annotated I51 or I56. If it is in an area that is **"Not a Targeted Area"**, the petition, and the CLAIMS approval screen, must be annotated R51 or R56.

For Form I-829 (Part II)

In accordance with the above instructions, approved petitions to remove the conditions on an investor's status must be annotated, on the petition and the CLAIMS approval screen, E51 or E56.

If you have questions, please contact Katharine A. Lorr, Adjudications Officer, HQADN (202) 514-5014.

U.S. Department of Justice
Immigration and Naturalization Service

HQ 40/6.1.3

425 I Street NW
Washington, DC 20536

JUN 26 1998

REVISED FIELD INSTRUCTIONS

MEMORANDUM FOR Regional Directors
District Directors (Including Foreign)
Regional Counsels
Officers-In-Charge (Including Foreign)
Port Directors
Service Center Directors
Directors, ODTF-Glynco, GA and Artesia, NM

FROM: Joseph R. Greene
Acting Associate Commissioner for Programs

SUBJECT: Immigrant Investor Petitions - Recent Actions
And Procedures for Eliminating the Hold

REVISED JUNE 12 MEMORANDUM

This memorandum supersedes the June 12 field memorandum on this subject. Due to a clerical error, the June 12 distribution should be destroyed and replaced by these instructions. Please note the changes to this memorandum in the last 2 sentences of the second paragraph of the section entitled "FORWARDING PETITIONS TO THE TIGER TEAM."

GENERAL INFORMATION

This memorandum provides Service Centers with the procedures that are to be followed for adjudicating immigrant investor petitions (Forms I-526 and I-829) that have been placed in the hold pursuant to the March 19, 1998, memorandum from this office.

Pursuant to the instructions in the March 11, 1998, field memorandum, the Administrative Appeals Office (AAO) received 19 immigrant investor petitions (I-526) on certification from the four Service Centers and is preparing decisions on these cases. The Immigration and

Naturalization Service (Service) will designate from among these 19 certified cases certain precedent decisions.

During the week of July 6, 1998, the Service will provide intensive supplemental training on these precedent decisions and related EB-5 matters to select adjudicators.

After the training, the Service will assemble a "tiger team" to adjudicate the cases currently in the Headquarters-directed hold. The "tiger team" will operate from the California Service Center from July 15 through August 13.

FORWARDING PETITIONS TO THE TIGER TEAM

Service Centers are instructed to forward all Form I-526 and I-829 petitions in the hold, clearly marked in red marker "EB-5 HOLD CASES," to the California Service Center by Federal Express, return receipt requested, by July 1, at the following address: 24000 Avila Road, 2nd floor (P.O. Box 10526), Laguna Niguel, California 92607-10526. The records point of contact is Lydia Lundquist, Program Assistant (949-360-2820). Petitions which fall within the terms of the hold should continue to be forwarded until August 1. Each Service Center should keep a complete list of transferred hold cases, with shipping receipts and tracking numbers.

Service Centers must notify petitioners whose cases have been forwarded to the California Service Center that their case has been forwarded for adjudication under the terms of decisions by the AAO and this field memorandum. This notification shall be by the Form I-797 transfer notice generated when transfer is made in CLAIMS and electronic jurisdiction is transferred to the California Service Center. In addition, petitioners shall be advised that if they seek to withdraw a petition and file a new petition in its place pursuant to the terms of this field memorandum, they must forward the new petition and the request for withdrawal, clearly marked in red marker "HOLD WITHDRAWAL" to the above address by July 30. After July 30, new petitions should be filed with the Service Center with jurisdiction over the new commercial enterprise for adjudication under normal procedures.

FORM I-526 ADJUDICATION

The "tiger team" is to adjudicate the approximately 680 initial cases currently being held, namely, newly filed Form I-526 petitions, Form I-526 petitions approved by the Service but returned by the Department of State for revocation before visa issuance, and related approved Form I-526 petitions with pending Form I-485 adjustment of status applications.

Aliens who wish to withdraw a petition from the hold and file a new Form I-526 petition may proceed in two ways. First, in accordance with the May 21 field memorandum, an alien who withdraws a petition from the hold prior to the AAO decisions may file a new petition

which, if it does not contain features that subject it to the hold, will be adjudicated under standard procedures. Assuming that there is no need for additional evidence, a certification for review, or other questions, the new petition will be adjudicated within the average processing time for this type of petition (currently 60 days). This group of petitions will be processed in chronological order by date of receipt (or date of fee acceptance) in accordance with O.I. 103.2(q).

Second, the Service continues its responsibility to promote job-creating and job-preserving investments and is permitting a petitioner to withdraw a petition within the hold after July 1, and file a new petition which clearly identifies the alien's withdrawn petition. Such newly filed petitions will be reviewed by the "tiger team" in the order in which they are filed. The "tiger team" may approve or deny petitions unless they require additional evidence. Where additional evidence is needed in order to complete the adjudication, the "tiger team" shall issue a Request for Evidence, directing the alien to submit the evidence to the Service Center having jurisdiction over the new commercial enterprise, and return the file to that Service Center.

If necessary, the "tiger team" shall forward for advice any new questions about eligibility under the law and the regulations that arise from complex financial or economic arrangements to Headquarters Adjudication (Business and Trade Services Branch) and return the file to the appropriate Service Center to complete the adjudication. A request for advice shall include a memorandum discussing the specific issues which need to be addressed, relevant research, background or other information, and shall, if possible, provide clear recommendations.

FORM I-829 ADJUDICATION

The "tiger team" shall adjudicate petitions on Form I-829 to remove conditions, filed at the end of an alien's 2-year period of conditional resident status, and in the hold, in accordance with the AAO decisions. In this regard, the Office of Legal Counsel of the Department of Justice has verified that, under the plain language of INA section 216A, the Service lacks authority to approve petitions to remove conditions for aliens who have entered the United States as conditional residents and whose petitions to remove conditions are subject to denial because they fail to meet the requirements of the law.

The Service, however, has determined that an alien whose Form I-829 petition fails to comport with the law may be provided with the opportunity to file, within 90 days of the date of the Notice of Intent to Terminate Status, a new petition that does not contain the defects in their original filing. Before a Notice of Intent to Terminate Status is sent, the petition should be screened to determine eligibility to file a new Form I-526. Eligible aliens shall be directed to file new petitions to the Service Center with jurisdiction over the new commercial enterprise This process is not available to aliens whose petitions to remove conditions are denied because the business in which the alien originally invested has ceased to operate or has failed to create or preserve 10 full-time jobs in the United States or to an alien seeking to invest in a different

business. This process is available only where the petition involves aspects of the December 19, 1997, General Counsel legal memorandum.

If an alien is determined to be eligible, the Notice of Intent to Terminate Status shall advise the alien that, if a new petition is filed within the specified time period and if it is approved, the alien will be deemed to have remained in lawful conditional status, provided the alien has withdrawn the old petition to remove conditions and agreed to file an immigrant visa application with the Department of State to begin a new 2-year period of conditional resident status.

The Notice of Intent shall further advise the alien that, as section 245(f) of the INA prohibits these immigrant investor visa conditional residents from adjusting status in the United States, he or she must apply for an immigrant visa at a consular post abroad in order to initiate the new 2-year period of conditional resident status. In addition, the alien must be advised that, to establish eligibility for this process, the alien must demonstrate that he or she: 1) fully complied with the business plan in the original initial petition; 2) sustained the investment throughout the 2-year conditional resident period; 3) was denied the request to remove the conditions on his or her status because his or her original petition did not comply with the law and the regulations, and; 4) is basing the new petition on the same job-creating or job-preserving United States business as the original petition.

LAWFUL PERMANENT RESIDENTS (EB-5 INVESTORS) WHOSE CONDITIONS HAVE BEEN REMOVED BY THE IMMIGRATION AND NATURALIZATION SERVICE

Absent a finding of fraud or other improper acts, the Service will not initiate recission proceedings in the cases of aliens who have obtained lawful permanent resident status (without conditions) based on petitions that may have not complied with the statute and regulations, as discussed in the General Counsel's memorandum of December 19, 1997.

Finally, Service officers are reminded that, as stated in the field memorandums of March 11 and May 21, 1998, immigrant investor petitions not subject to the hold should be adjudicated in the same manner as any other newly filed petition; they are not covered by this field memorandum. Pursuant to the May 21 field memorandum, petitioners whose cases do not fall within the terms of the hold are to be advised of this determination through routine procedures.

Questions regarding these field instructions, may be directed to Katharine A. Lorr at HQADN, (202) 514-5014. The Offices of Naturalization Operations and Field Operations have concurred with this memorandum.

U.S. Department of Justice
Immigration and Naturalization Service

425 I Street NW
Washington, DC 20536

HQ 40/6.3

AUG - 4 1998

MEMORANDUM FOR Regional Directors
District Directors (Including Foreign)
Regional Counsels
Officers-In-Charge (Including Foreign)
Port Directors
Service Center Directors
Directors, ODTF-Glynco, GA and Artesia, NM

FROM: Michael D. Cronin
Acting Associate Commissioner for Programs

SUBJECT Immigrant Investor Petitions - Extension of Time to Withdraw A Held Petition and File a New Petition in its Place

GENERAL INFORMATION

This memorandum supplements the Revised Field Instructions issued on June 26, 1998, which provided Service Centers with information regarding recent actions and procedures for eliminating the hold on certain immigrant investor petitions.

In that field memorandum, petitioners were advised that if they seek to withdraw a clearly identified petition from the "hold" and file a new petition in its place with the "tiger team" assembled at the California Service Center, they must forward the new petition and the request for withdrawal, clearly marked in red marker " HOLD WITHDRAWAL" to the California Service Center by July 30th.

EXTENSION OF TIME TO WITHDRAW AND FILE A NEW PETITION

The Service has been advised that its customers need additional time to consider the guidance provided in recent precedent decisions of the Administrative Appeals Office (AAO) in determining whether to take advantage of the opportunity for "tiger team" adjudication of a new petition. For this reason, the Service has determined to extend to August 31 the time for withdrawing such a petition and filing a new petition. Again, the the new petition and request to withdraw must be clearly marked as indicated above and forwarded to the California Service Center, 24000 Avila Road, 2nd floor (P.O. Box 10526), Laguna Niguel, California, 92607-10526.

Service Centers are instructed that this group of petitions will be processed in chronological order by date of receipt (or date of fee acceptance) in accordance with O.I 103.2(q) and in a separate queue from petitions for which there is no withdrawal. As stated in the July 26 field memorandum, the "tiger team" may approve or deny petitions unless they require additional evidence. Where additional evidence is needed in order to complete the adjudication, the "tiger team" shall issue a Request for Evidence, directing the alien to submit the evidence to the Service Center having jurisdiction over the new commercial enterprise, and return the file to that Service Center.

PROCESSING OF PETITIONS

After August 31, the procedure for withdrawing cases from the hold and filing a new petition with the "tiger team" in its place will not be available. Petitioners may, of course, withdraw and refile a petition at any time under standard procedures. If a hold case is not withdrawn and the petitioner files a second petition, that second petition should be filed with the Service Center having jurisdiction under normal procedures. New petitions unrelated to a hold case that has been withdrawn may be filed at this time with the Service Center with jurisdiction over the new commercial enterprise for adjudication under normal procedures.

All petitions filed after August 31 should be filed with the Service Center with jurisdiction over the new commercial enterprise for adjudication under normal procedures.

Based on the best information available at this time, the Service estimates that it will take the "tiger team" 30 days to adjudicate all the cases currently in the hold. For this reason, the "tiger team" will convene at the California Service Center on September 8 and terminate its adjudications on October 8, 1998. Cases that are not adjudicated by the "tiger team" by October 8 will be returned to the Service Center with jurisdiction for adjudication under normal procedures, respecting the filing order established by the "tiger team"

Questions regarding these field instructions, may be directed to Katharine A. Lorr at HQADN, (202) 514-5014. The Offices of Naturalization Operations and Field Operations have concurred with this memorandum.

CC DOS/VO/Steve Fischel and Ed Odom

cc: Official File
Adj Log
INS:HQBEN:KALOKR:fmeb5.728 AUG - 5 1998

U.S. Department of Justice
Immigration and Naturalization Service

425 I Street NW
Washington, DC 20536

HQ 40/6. .3

AUG 28 1998

MEMORANDUM FOR: Regional Directors
District Directors (Including Foreign)
Regional Counsels
Officers-In-Charge (Including Foreign)
Port Directors
Service Center Directors
Directors, ODTF-Glynco, GA and Artesia, NM

FROM: Robert L. Bach
Executive Associate Commissioner
Office of Policy and Planning

SUBJECT Immigrant Investor Petitions -
Placement of Invested Funds in Escrow and
Extension of Time to Withdraw a Held Petition and
File a New Petition in its Place

This memorandum provides Service Center officers with instructions regarding the placement of invested funds in escrow by a petitioner seeking classification as an alien entrepreneur. In addition, the Service has determined to extend the time during which a petitioner may withdraw a clearly identified petition from the "hold" and file a new petition in its place with the "tiger team" assembled at the California Service Center. In the August 4 field memorandum on this issue, petitioners were given until August 31 to withdraw and refile such a petition.

EXTENSION OF TIME TO WITHDRAW AND FILE A NEW PETITION

The Service has determined to extend to September 14 the time for withdrawing a petition from the "hold" and filing a new petition with the "tiger team" assembled at the

California Service Center. This final extension will provide its customers with sufficient time to consider recent guidance.

ESCROW - GENERAL INFORMATION

Service Officers are advised that terms of an escrow in a petition for alien entrepreneur classification, as well as all other aspects of the petition, must comport with the requirements of section 203(b)(5) of the Immigration and Nationality Act (the Act), as well as 8 CFR 204.6 and 216.6.

Consistent with field memorandum of August 4 and June 26, the Service remains committed to encouraging investment by immigrants who meet the requirements of the law. These instructions are also consistent with prior guidance entitled "Policy Questions for Investors" issued on July 21, 1993 by the Office of Adjudications (Jaime Cabanilla).

In accordance with 8 CFR 204.6(j), a petition submitted on Form I-526 for classification as an alien entrepreneur (EB-5) must contain evidence that the alien has invested or is actively in the process of investing lawfully obtained capital in a new commercial enterprise in the United States which will create full-time positions for 10 qualifying employees. To show that the petitioner has invested or is actively in the process of investing the required amount of capital, 8 CFR 204.6(j)(2) requires that the petition be accompanied by "evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. . . . The alien must show actual commitment of the required amount of capital."

ESCROW BY ALIEN ENTREPRENEUR TO COMMIT INVESTMENT FUNDS

The regulations at 8 CFR 204.6 do not address directly the use of an escrow prior to visa issuance. An escrow is a legal mechanism that places the funds of one person (called the grantor, promisor, or obligor) in the hands of a third party (called the escrow holder) to be delivered to another person (called the grantee, promisee, or obligee) upon the occurrence of some event or the meeting of some condition. In the case of an alien entrepreneur, an escrow enables the required initial capital investment to be held by a third party escrow holder and released to the new commercial enterprise when the petition is approved and the visa has been issued or, if the alien is located in the United States, adjustment has occurred. If the petition, or the visa, or adjustment application is denied, the escrow holder will return the money to the alien. In this way the alien's investment is made contingent on the alien's ability to assume the status of alien entrepreneur and enter or remain in the United States to oversee his or her investment.

ESCROW TERMS THAT COMPORT WITH SECTION 203(b)(5) OF THE ACT

Service adjudicators are familiar with escrow arrangements, as the use of escrow is authorized by the regulations at 8 CFR 214.2(e)(12) for nonimmigrant (E-2) investors

who, like the immigrant (EB-5) investors, must place their own capital at risk and demonstrate that the investment capital is committed to the enterprise

The use of escrow arrangements in the alien entrepreneur category is, however, distinct from that in the nonimmigrant E category due to the terms of section 203(b)(5) of the Act and implementing regulations. The Service has become aware of examples of escrow accounts used by petitioners seeking alien entrepreneur classification whose terms either obviously fail to comport with the requirements of section 203(b)(5) of the Act, are never realized, or appear to reduce the likelihood that the petitioner's job creation requirements will be realized within the two-year conditional period. In certain cases, petitioners have recited the requirements of the nonimmigrant E classification to justify escrows which fail to comport with section 203(b)(5) of the Act.

For this reason, Service officers are cautioned that they must examine closely the terms of an escrow to ensure that the terms comport with section 203(b)(5) of the Act. For purposes of the alien entrepreneur classification, an escrow must state that the required initial capital contribution is actually committed to the new commercial enterprise, where it will be available and put to use for job creation purposes immediately and irrevocably upon approval of the petition and visa issuance, or adjustment. The escrow must unequivocally release the funds into the operations of the job creation enterprise (i.e., into the enterprise's United States business accounts) for job creation purposes.

Capital in escrow may not be counted as investment capital unless such funds are immediately and irrevocably committed to the investment enterprise for job creation purposes upon petition approval and visa issuance or, in the case of adjustment, upon granting of the adjustment application. A mere statement that the funds are available from the escrow agent is not acceptable evidence of commitment. It is not sufficient if the funds are released into a limited partnership, trust fund, trust agreement or other vehicle where they are not truly at risk, have not been committed, and may be diverted from the job creation purposes which are essential to this classification. Service officers are reminded that a petitioner bears the burden of demonstrating that his or her investment meets the requirements of section 203(b)(5) of the Act. If necessary, Service officers may require an additional statement that the petitioner will not enter into any agreements that would prevent the escrow funds from achieving the statutory purposes or that would otherwise have the effect of circumventing the requirements of section 203(b)(5) of the Act. If officers have any doubts as to the amount, terms, or existence of an escrow, they should contact the escrow holder directly for written confirmation of the escrow account and agreement.

Finally, to ensure that the escrow agreement is a genuine arms-length transaction, the escrow holder must be a bank or similar entity that has no relationship other than that of escrow holder to the alien or the new commercial enterprise or their

legal representatives. The escrow agreement should further permit the alien the return of his or her money upon either the denial of the petition or its withdrawal by the alien.

Questions regarding these field instructions, may be directed to Katharine A. Lorr at HQADN, (202) 514-5014. The Immigration Services Division has concurred with this memorandum.

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

NOV 19 1998

EB-5 FIELD MEMO NUMBER 8: CONSOLIDATION

MEMORANDUM FOR: Regional Directors
District Directors (Including Foreign)
Regional Counsels
Officers-In-Charge (Including Foreign)
Port Directors
Service Center Directors
Directors, OPTF-Glynco, GA and Artesia, NM

FROM: Robert L. Bach
Executive Associate Commissioner
Office of Policy and Planning

SUBJECT: Immigrant Investor Petitions -
Consolidation of E-1/E-2 Applications and EB-5 Petitions;
Sequential Numbering of EB-5 Field Memorandum

This memorandum advises Service Center officers that E nonimmigrant applications and EB-5 petitions will be consolidated at the Texas and California Service Centers in the near future. In addition, this memorandum provides for the sequential numbering of EB-5 field memorandum issued since March 11, 1998.

CONSOLIDATION OF E NONIMMIGRANT APPLICATIONS AND EB-5 PETITIONS

The Service has forwarded a Notice to the Federal Register announcing that all petitions and applications related to classification as a treaty trader (E-1), treaty investor (E-2), or alien entrepreneur (EB-5) are directed to be filed at either the Texas or California Service Centers, pursuant to their newly defined jurisdictional areas. This action is

necessary to provide more effective monitoring and control of these often complex, time-consuming adjudications. The consolidation of these matters at the Texas and California Service Centers will be effective on the date the Notice is published in the Federal Register and the Nebraska and Vermont Service Centers will no longer have jurisdiction over E-1, E-2, and EB-5 matters.

Effective on the date of publication in the Federal Register, petitions for immigrant investor classification which have been filed pursuant to 8 CFR 204.6(b) and 216.6(b) with the Service Center having jurisdiction over the area in which the new commercial enterprise is or will be principally doing business, will be filed with: (1) the Texas Service Center if the new commercial enterprise is located, or will principally be doing business, in the areas previously covered by the Vermont and Texas Service Centers; (2) the California Service Center if the new commercial enterprise is located, or will principally be doing business, in the areas previously covered by the California and Nebraska Service Centers.

The same change will occur with regard to applications for extension of stay or change of status into E-1 or E-2 classification which are filed pursuant to the instructions on Form I-129 with the Service Center with jurisdiction over the location of employment.

For a period of 60 days after the publication of this Notice, the Service Centers in Vermont and Nebraska will forward these applications and petitions to the Service Centers in Texas and California, respectively, in order to facilitate this transition. Similarly, any of these applications and petitions filed in error will be forwarded to the appropriate Service Center during the 60-day period. After the 60-day period, these petitions and applications must be filed at the correct Service Center. Thereafter, petitions and applications which are filed at the incorrect office shall be returned to the petitioner or applicant for filing at the Service Center with jurisdiction under the terms of this memorandum.

The Office of Field Operations, Immigration Services Division will ensure adequate staffing at the California and Texas Service Center to manage this increased workload. In addition, arrangements are being made for additional training in complex financial matters for Service Center officers stationed at those locations. Questions in this regard may be addressed to the Immigration Services Division at (202) 514-0078.

SEQUENTIAL NUMBERING OF EB-5 FIELD MEMORANDA

Due to the numerous complex issues and procedures addressed in recent field memoranda on immigrant investor petitions, there is a need to provide a system for clearly identifying these memoranda. Each memorandum will be headlined in bold "EB-5 Field Memorandum" and numbered sequentially, starting with the March 11

field memorandum, so that they can be readily directed within an office to those employees in need of this information. Please be sure that all special agents, assistant district counsels, adjudicators and information officers under your jurisdiction who handle these matters are immediately provided with these memoranda.

Since March 11, the following EB-5 field memoranda have been issued:

EB-5 Memo	Date Issued	Subject (Signed by)
#1	March 11	Petitions with Certain Key Features (Cronin)
#2	April 30	Immigrant Investor Codes (Bednarz)
#3	May 21	Requests that Cases be Removed from the Hold (Bednarz)
#4	June 12	Recent Actions and Procedures for Eliminating the Hold (for Greene, by Cronin)
#5	June 26	Revised June 12 Memo - Recent Actions and Procedures for Eliminating the Hold (for Greene, by Cronin)
#6	August 4	Extension of Time to Withdraw a Held Petition and File A New Petition in its Place (Cronin)
#7	August 28	Placement of Invested Funds in Escrow and Extension of Time to Withdraw a Held Petition and File a New Petition In its Place (Bach)

As noted in the headline, this EB-5 field memorandum is the 8th to be issued

Field offices are directed to their respective Regional Offices, Adjudications to obtain copies of any missing EB-5 field memoranda.

Questions regarding these field instructions, may be directed to Katharine A. Lorr at HQADN, (202) 514-5014. The Immigration Services Division has concurred with this memorandum.

Form **1065**
Department of the Treasury
Internal Revenue Service

U.S. Return of Partnership Income

For calendar year 2007, or tax year beginning ....., 2007, ending ....., 20.....
▶ See separate instructions.

OMB No. 1545-0099

2007

A Principal business activity: **Apparel**	Use the IRS label. Otherwise, print or type.	Name of partnership: **TRAINING EXAMPLE**	D Employer identification number:
B Principal product or service: **Sportswear**		Number, street, and room or suite no. If a P.O. box, see the instructions.	E Date business started: **6/11/07**
C Business code number: **315220**		City or town, state, and ZIP code: **New York, NY 10018**	F Total assets (see the instructions): $ **529,477**

G Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return

H Check accounting method: (1) ☑ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶

I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year ▶ **2**

J Check if Schedule M-3 attached . . . . . ☐

Caution. *Include **only** trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.*

Income	1a	Gross receipts or sales	1a **85,200**		
	b	Less returns and allowances	1b **3,445**	1c	**81,755**
	2	Cost of goods sold (Schedule A, line 8)		2	**66,191**
	3	Gross profit. Subtract line 2 from line 1c		3	**15,564**
	4	Ordinary income (loss) from other partnerships, estates, and trusts *(attach statement)*		4	
	5	Net farm profit (loss) *(attach Schedule F (Form 1040))*		5	
	6	Net gain (loss) from Form 4797, Part II, line 17 *(attach Form 4797)*		6	
	7	Other income (loss) *(attach statement)*		7	
	8	**Total income (loss).** Combine lines 3 through 7		8	**15,564**
Deductions (see the instructions for limitations)	9	Salaries and wages (other than to partners) (less employment credits)		9	
	10	Guaranteed payments to partners		10	
	11	Repairs and maintenance		11	
	12	Bad debts		12	
	13	Rent		13	
	14	Taxes and licenses		14	
	15	Interest		15	
	16a	Depreciation *(if required, attach Form 4562)*	16a		
	b	Less depreciation reported on Schedule A and elsewhere on return	16b	16c	
	17	Depletion **(Do not deduct oil and gas depletion.)**		17	
	18	Retirement plans, etc.		18	
	19	Employee benefit programs		19	
	20	Other deductions *(attach statement)*		20	
	21	**Total deductions.** Add the amounts shown in the far right column for lines 9 through 20		21	**10,969**
	22	**Ordinary business income (loss).** Subtract line 21 from line 8		22	**4,595**

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member manager) is based on all information of which preparer has any knowledge.

▶ Signature of general partner or limited liability company member manager ▶ Date

May the IRS discuss this return with the preparer shown below (see instructions)? ☐ Yes ☐ No

Paid Preparer's Use Only

Preparer's signature	Date	Check if self-employed ▶ ☐	Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code ▶		EIN ▶	
		Phone no. ( )	

Schedule A Cost of Goods Sold (see the instructions)

1	Inventory at beginning of year	1	
2	Purchases less cost of items withdrawn for personal use	2	101,507
3	Cost of labor	3	
4	Additional section 263A costs *(attach statement)*	4	
5	Other costs *(attach statement)*	5	2,074
6	**Total.** Add lines 1 through 5	6	103,581
7	Inventory at end of year	7	37,390
8	**Cost of goods sold.** Subtract line 7 from line 6. Enter here and on page 1, line 2	8	66,191

9a Check all methods used for valuing closing inventory:
- (i) ☐ Cost as described in Regulations section 1.471-3
- (ii) ☑ Lower of cost or market as described in Regulations section 1.471-4
- (iii) ☐ Other (specify method used and attach explanation) ▶

b Check this box if there was a writedown of "subnormal" goods as described in Regulations section 1.471-2(c) ▶ ☐

c Check this box if the LIFO inventory method was adopted this tax year for any goods *(if checked, attach Form 970)* ▶ ☐

d Do the rules of section 263A (for property produced or acquired for resale) apply to the partnership? ☐ Yes ☑ No

e Was there any change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☑ No
If "Yes," attach explanation.

Schedule B Other Information

		Yes	No
1	What type of entity is filing this return? Check the applicable box:		
	a ☐ Domestic general partnership b ☐ Domestic limited partnership		
	c ☑ Domestic limited liability company d ☐ Domestic limited liability partnership		
	e ☐ Foreign partnership f ☐ Other ▶		
2	Are any partners in this partnership also partnerships?	✓	
3	During the partnership's tax year, did the partnership own any interest in another partnership or in any foreign entity that was disregarded as an entity separate from its owner under Regulations section 301.7701-2 and 301.7701-3? If "Yes," see instructions for required attachment		✓
4	Did the partnership file Form 8893, Election of Partnership Level Tax Treatment, or an election statement under section 6231(a)(1)(B)(ii) for partnership-level tax treatment, that is in effect for this tax year? See Form 8893 for more details		✓
5	Does this partnership meet all three of the following requirements?		
	a The partnership's total receipts for the tax year were less than $250,000;		
	b The partnership's total assets at the end of the tax year were less than $600,000; and		
	c Schedules K-1 are filed with the return and furnished to the partners on or before the due date (including extensions) for the partnership return		✓
	If "Yes," the partnership is not required to complete Schedules L, M-1, and M-2; Item F on page 1 of Form 1065; or Item L on Schedule K-1.		
6	Does this partnership have any foreign partners? If "Yes," the partnership may have to file Forms 8804, 8805 and 8813. See the instructions		✓
7	Is this partnership a publicly traded partnership as defined in section 469(k)(2)?		✓
8	Has this partnership filed, or is it required to file, a return under section 6111 to provide information on any reportable transaction?		✓
9	At any time during calendar year 2007, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? See the instructions for exceptions and filing requirements for Form TD F 90-22.1. If "Yes," enter the name of the foreign country. ▶		✓
10	During the tax year, did the partnership receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the partnership may have to file Form 3520. See the instructions		✓
11	Was there a distribution of property or a transfer (for example, by sale or death) of a partnership interest during the tax year? If "Yes," you may elect to adjust the basis of the partnership's assets under section 754 by attaching the statement described under *Elections Made By the Partnership* in the instructions		✓
12	Enter the number of Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, attached to this return ▶		

Designation of Tax Matters Partner (see the instructions)
Enter below the general partner designated as the tax matters partner (TMP) for the tax year of this return:

Name of designated TMP ▶ Identifying number of TMP ▶

Address of designated TMP ▶

Schedule K Partners' Distributive Share Items — **Total amount**

Income (Loss)

1	Ordinary business income (loss) (page 1, line 22)	1	4,595
2	Net rental real estate income (loss) *(attach Form 8825)*	2	
3a	Other gross rental income (loss) — 3a		
b	Expenses from other rental activities *(attach statement)* — 3b		
c	Other net rental income (loss). Subtract line 3b from line 3a	3c	
4	Guaranteed payments	4	
5	Interest income	5	2,935
6	Dividends: a Ordinary dividends	6a	
	b Qualified dividends — 6b		
7	Royalties	7	
8	Net short-term capital gain (loss) *(attach Schedule D (Form 1065))*	8	
9a	Net long-term capital gain (loss) *(attach Schedule D (Form 1065))*	9a	
b	Collectibles (28%) gain (loss) — 9b		
c	Unrecaptured section 1250 gain *(attach statement)* — 9c		
10	Net section 1231 gain (loss) *(attach Form 4797)*	10	
11	Other income (loss) *(see instructions)* Type ▶	11	

Deductions

12	Section 179 deduction *(attach Form 4562)*	12	
13a	Contributions	13a	
b	Investment interest expense	13b	
c	Section 59(e)(2) expenditures: (1) Type ▶ (2) Amount ▶	13c(2)	
d	Other deductions *(see instructions)* Type ▶	13d	

Self-Employment

14a	Net earnings (loss) from self-employment	14a	
b	Gross farming or fishing income	14b	
c	Gross nonfarm income	14c	

Credits

15a	Low-income housing credit (section 42(j)(5))	15a	
b	Low-income housing credit (other)	15b	
c	Qualified rehabilitation expenditures (rental real estate) *(attach Form 3468)*	15c	
d	Other rental real estate credits *(see instructions)* Type ▶	15d	
e	Other rental credits *(see instructions)* Type ▶	15e	
f	Other credits *(see instructions)* Type ▶	15f	

Foreign Transactions

16a	Name of country or U.S. possession ▶		
b	Gross income from all sources	16b	
c	Gross income sourced at partner level	16c	
	Foreign gross income sourced at partnership level		
d	Passive category ▶ e General category ▶ f Other ▶	16f	
	Deductions allocated and apportioned at partner level		
g	Interest expense ▶ h Other ▶	16h	
	Deductions allocated and apportioned at partnership level to foreign source income		
i	Passive category ▶ j General category ▶ k Other ▶	16k	
l	Total foreign taxes (check one): ▶ Paid ☐ Accrued ☐	16l	
m	Reduction in taxes available for credit *(attach statement)*	16m	
n	Other foreign tax information *(attach statement)*		

Alternative Minimum Tax (AMT) Items

17a	Post-1986 depreciation adjustment	17a	
b	Adjusted gain or loss	17b	
c	Depletion (other than oil and gas)	17c	
d	Oil, gas, and geothermal properties—gross income	17d	
e	Oil, gas, and geothermal properties—deductions	17e	
f	Other AMT items *(attach statement)*	17f	

Other Information

18a	Tax-exempt interest income	18a	
b	Other tax-exempt income	18b	
c	Nondeductible expenses	18c	
19a	Distributions of cash and marketable securities	19a	
b	Distributions of other property	19b	
20a	Investment income	20a	
b	Investment expenses	20b	
c	Other items and amounts *(attach statement)*		

Analysis of Net Income (Loss)

1	Net income (loss). Combine Schedule K, lines 1 through 11. From the result, subtract the sum of Schedule K, lines 12 through 13d, and 16l				1	
2	Analysis by partner type:	(i) Corporate	(ii) Individual (active)	(iii) Individual (passive)	(iv) Partnership	(v) Exempt organization	(vi) Nominee/Other
a	General partners						
b	Limited partners			7,530			

Schedule L Balance Sheets per Books

Assets	Beginning of tax year (a)	Beginning of tax year (b)	End of tax year (c)	End of tax year (d)
1 Cash				395,331
2a Trade notes and accounts receivable			81,756	
b Less allowance for bad debts				81,756
3 Inventories				37,390
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets *(attach statement)*				15,000
7 Mortgage and real estate loans				
8 Other investments *(attach statement)*				
9a Buildings and other depreciable assets				
b Less accumulated depreciation				
10a Depletable assets				
b Less accumulated depletion				
11 Land (net of any amortization)				
12a Intangible assets (amortizable only)				
b Less accumulated amortization				
13 Other assets *(attach statement)*				
14 Total assets		0		529,477
Liabilities and Capital				
15 Accounts payable				103,607
16 Mortgages, notes, bonds payable in less than 1 year				
17 Other current liabilities *(attach statement)*				10,340
18 All nonrecourse loans				
19 Mortgages, notes, bonds payable in 1 year or more				
20 Other liabilities *(attach statement)*				
21 Partners' capital accounts				415,530
22 Total liabilities and capital		0		529,477

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note. Schedule M-3 may be required instead of Schedule M-1 (see instructions).

1	Net income (loss) per books	7,530	6 Income recorded on books this year not included on Schedule K, lines 1 through 11 (itemize): a Tax-exempt interest $
2	Income included on Schedule K, lines 1, 2, 3c, 5, 6a, 7, 8, 9a, 10, and 11, not recorded on books this year (itemize):		
3	Guaranteed payments (other than health insurance)		7 Deductions included on Schedule K, lines 1 through 13d, and 16l, not charged against book income this year (itemize): a Depreciation $
4	Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 16l (itemize): a Depreciation $ b Travel and entertainment $		8 Add lines 6 and 7
5	Add lines 1 through 4	7,530	9 Income (loss) (Analysis of Net Income (Loss), line 1). Subtract line 8 from line 5 — 7,530

Schedule M-2 Analysis of Partners' Capital Accounts

1	Balance at beginning of year		6 Distributions: a Cash	
2	Capital contributed: a Cash	408,000	b Property	
	b Property		7 Other decreases (itemize):	
3	Net income (loss) per books	7,530		
4	Other increases (itemize):		8 Add lines 6 and 7	
5	Add lines 1 through 4	415,530	9 Balance at end of year. Subtract line 8 from line 5	415,530

SCHEDULE C (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Profit or Loss From Business

(Sole Proprietorship)

▶ **Partnerships, joint ventures, etc., must file Form 1065 or 1065-B.**

▶ **Attach to Form 1040, 1040NR, or 1041.** ▶ **See Instructions for Schedule C (Form 1040).**

OMB No. 1545-0074

2007

Attachment Sequence No. **09**

Name of proprietor: **TRAINING EXAMPLE**

Social security number (SSN):

A Principal business or profession, including product or service (see page C-2 of the instructions)

B Enter code from pages C-8, 9, & 10 ▶

C Business name. If no separate business name, leave blank.

D Employer ID number (EIN), if any

E Business address (including suite or room no.) ▶

City, town or post office, state, and ZIP code

F Accounting method: (1) ☑ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶

G Did you "materially participate" in the operation of this business during 2007? If "No," see page C-3 for limit on losses ☑ Yes ☐ No

H If you started or acquired this business during 2007, check here ▶ ☐

Part I Income

1	Gross receipts or sales. **Caution.** If this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, see page C-3 and check here ▶ ☐	1	55,555
2	Returns and allowances	2	
3	Subtract line 2 from line 1	3	55,555
4	Cost of goods sold (from line 42 on page 2)	4	10,000
5	**Gross profit.** Subtract line 4 from line 3	5	45,555
6	Other income, including federal and state gasoline or fuel tax credit or refund (see page C-3)	6	
7	**Gross income.** Add lines 5 and 6 ▶	7	45,555

Part II Expenses. Enter expenses for business use of your home **only** on line 30.

8	Advertising	8	500	18	Office expense	18	
9	Car and truck expenses (see page C-4)	9	1500	19	Pension and profit-sharing plans	19	
10	Commissions and fees	10		20	Rent or lease (see page C-5):		
11	Contract labor (see page C-4)	11	2000	a	Vehicles, machinery, and equipment	20a	
12	Depletion	12		b	Other business property	20b	
13	Depreciation and section 179 expense deduction (not included in Part III) (see page C-4)	13	2000	21	Repairs and maintenance	21	
				22	Supplies (not included in Part III)	22	
				23	Taxes and licenses	23	
				24	Travel, meals, and entertainment:		
				a	Travel	24a	
14	Employee benefit programs (other than on line 19)	14		b	Deductible meals and entertainment (see page C-6)	24b	
15	Insurance (other than health)	15		25	Utilities	25	
16	Interest:			26	Wages (less employment credits)	26	500
a	Mortgage (paid to banks, etc.)	16a		27	Other expenses (from line 48 on page 2)	27	
b	Other	16b					
17	Legal and professional services	17	500				

28	**Total expenses** before expenses for business use of home. Add lines 8 through 27 in columns ▶	28	7,000
29	Tentative profit (loss). Subtract line 28 from line 7	29	38,555
30	Expenses for business use of your home. Attach **Form 8829**	30	
31	**Net profit or (loss).** Subtract line 30 from line 29. • If a profit, enter on both **Form 1040, line 12,** and **Schedule SE, line 2,** or on **Form 1040NR, line 13** (statutory employees, see page C-7). Estates and trusts, enter on Form 1041, line 3. • If a loss, you **must** go to line 32.	31	38,555
32	If you have a loss, check the box that describes your investment in this activity (see page C-7). • If you checked 32a, enter the loss on both **Form 1040, line 12,** and **Schedule SE, line 2,** or on **Form 1040NR, line 13** (statutory employees, see page C-7). Estates and trusts, enter on Form 1041, line 3. • If you checked 32b, you **must** attach **Form 6198.** Your loss may be limited.	32a ☑ All investment is at risk. 32b ☐ Some investment is not at risk.	

Part III Cost of Goods Sold (see page C-7)

33 Method(s) used to value closing inventory: a ☐ Cost b ☐ Lower of cost or market c ☐ Other (attach explanation)

34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation . . . . . ☐ Yes ☐ No

35	Inventory at beginning of year. If different from last year's closing inventory, attach explanation	35	4,000	
36	Purchases less cost of items withdrawn for personal use	36	1,000	
37	Cost of labor. Do not include any amounts paid to yourself	37	2,000	
38	Materials and supplies	38	5,000	
39	Other costs	39		
40	Add lines 35 through 39	40		
41	Inventory at end of year	41	2,000	
42	**Cost of goods sold.** Subtract line 41 from line 40. Enter the result here and on page 1, line 4	42	10,000	

Part IV Information on Your Vehicle. Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 on page C-4 to find out if you must file Form 4562.

43 When did you place your vehicle in service for business purposes? (month, day, year) ▶ ____/____/____

44 Of the total number of miles you drove your vehicle during 2007, enter the number of miles you used your vehicle for:

a Business _____ b Commuting (see instructions) _____ c Other _____

45 Do you (or your spouse) have another vehicle available for personal use? . . . . ☐ Yes ☐ No

46 Was your vehicle available for personal use during off-duty hours? . . . . ☐ Yes ☐ No

47a Do you have evidence to support your deduction? . . . . ☐ Yes ☐ No

b If "Yes," is the evidence written? . . . . ☐ Yes ☐ No

Part V Other Expenses. List below business expenses not included on lines 8–26 or line 30.

48 **Total other expenses.** Enter here and on page 1, line 27	48	

Form **1120S**

Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for an S Corporation

▶ **Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.**

▶ **See separate instructions.**

OMB No. 1545-0130

2007

For calendar year 2007 or tax year beginning , 2007, ending , 20

A S election effective date	**Use IRS label. Otherwise, print or type.**	Name	**D** Employer identification number
B Business activity code number (see instructions)		Number, street, and room or suite no. If a P.O. box, see instructions.	**E** Date incorporated
C Check if Sch. M-3 attached ☐		City or town, state, and ZIP code	**F** Total assets *(see instructions)* $

G Is the corporation electing to be an S corporation beginning with this tax year? ☐ Yes ☐ No If "Yes," attach Form 2553 if not already filed

H Check if: **(1)** ☐ Final return **(2)** ☐ Name change **(3)** ☐ Address change **(4)** ☐ Amended return **(5)** ☐ S election termination or revocation

I Enter the number of shareholders in the corporation at the end of the tax year ▶

Caution. *Include* ***only*** *trade or business income and expenses on lines 1a through 21. See the instructions for more information.*

Income	1a	Gross receipts or sales ____ b Less returns and allowances ____ c Bal ▶	1c	
	2	Cost of goods sold (Schedule A, line 8)	2	
	3	Gross profit. Subtract line 2 from line 1c	3	
	4	Net gain (loss) from Form 4797, Part II, line 17 *(attach Form 4797)*	4	
	5	Other income (loss) *(see instructions—attach statement)*	5	
	6	**Total income (loss).** Add lines 3 through 5 ▶	6	
Deductions (see instructions for limitations)	7	Compensation of officers	7	
	8	Salaries and wages (less employment credits)	8	
	9	Repairs and maintenance	9	
	10	Bad debts	10	
	11	Rents	11	
	12	Taxes and licenses	12	
	13	Interest	13	
	14	Depreciation not claimed on Schedule A or elsewhere on return *(attach Form 4562)*	14	
	15	Depletion **(Do not deduct oil and gas depletion.)**	15	
	16	Advertising	16	
	17	Pension, profit-sharing, etc., plans	17	
	18	Employee benefit programs	18	
	19	Other deductions *(attach statement)*	19	
	20	**Total deductions.** Add lines 7 through 19 ▶	20	
	21	**Ordinary business income (loss).** Subtract line 20 from line 6	21	
Tax and Payments	22a	Excess net passive income or LIFO recapture tax *(see instructions)* 22a		
	b	Tax from Schedule D (Form 1120S) 22b		
	c	Add lines 22a and 22b *(see instructions for additional taxes)*	22c	
	23a	2007 estimated tax payments and 2006 overpayment credited to 2007 23a		
	b	Tax deposited with Form 7004 23b		
	c	Credit for federal tax paid on fuels *(attach Form 4136)* 23c		
	d	Add lines 23a through 23c	23d	
	24	Estimated tax penalty *(see instructions)*. Check if Form 2220 is attached ▶ ☐	24	
	25	**Amount owed.** If line 23d is smaller than the total of lines 22c and 24, enter amount owed	25	
	26	**Overpayment.** If line 23d is larger than the total of lines 22c and 24, enter amount overpaid	26	
	27	Enter amount from line 26 **Credited to 2008 estimated tax** ▶ **Refunded** ▶	27	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer ____ Date ____ Title ____

May the IRS discuss this return with the preparer shown below (see instructions)? ☐ **Yes** ☐ **No**

Paid Preparer's Use Only

Preparer's signature ▶		Date	Check if self-employed ☐
Firm's name (or yours if self-employed), address, and ZIP code ▶		EIN	Preparer's SSN or PTIN
		Phone no. ( )	

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 11510H Form **1120S** (2007)

Schedule A Cost of Goods Sold (see instructions)

1	Inventory at beginning of year	1	
2	Purchases	2	
3	Cost of labor	3	
4	Additional section 263A costs *(attach statement)*	4	
5	Other costs *(attach statement)*	5	
6	**Total.** Add lines 1 through 5	6	
7	Inventory at end of year	7	
8	**Cost of goods sold.** Subtract line 7 from line 6. Enter here and on page 1, line 2	8	

9a Check all methods used for valuing closing inventory: *(i)* ☐ Cost as described in Regulations section 1.471-3
(ii) ☐ Lower of cost or market as described in Regulations section 1.471-4
(iii) ☐ Other (Specify method used and attach explanation.) ▶

b Check if there was a writedown of subnormal goods as described in Regulations section 1.471-2(c) ▶ ☐

c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ ☐

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO 9d

e If property is produced or acquired for resale, do the rules of section 263A apply to the corporation? ☐ Yes ☐ No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☐ No
If "Yes," attach explanation.

Schedule B Other Information (see instructions)

		Yes	No
1	Check accounting method: a ☐ Cash b ☐ Accrual c ☐ Other (specify) ▶		
2	See the instructions and enter the: a Business activity ▶ b Product or service ▶		
3	At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) If "Yes," attach a statement showing: **(a)** name and employer identification number (EIN), **(b)** percentage owned, and **(c)** if 100% owned, was a QSub election made?		
4	Has this corporation filed, or is it required to file, a return under section 6111 to provide information on any reportable transaction?		
5	Check this box if the corporation issued publicly offered debt instruments with original issue discount ▶ ☐ If checked, the corporation may have to file **Form 8281,** Information Return for Publicly Offered Original Issue Discount Instruments.		
6	If the corporation: **(a)** was a C corporation before it elected to be an S corporation **or** the corporation acquired an asset with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation **and (b)** has net unrealized built-in gain (defined in section 1374(d)(1)) in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years ▶ $		
7	Enter the accumulated earnings and profits of the corporation at the end of the tax year. $		
8	Are the corporation's total receipts *(see instructions)* for the tax year **and** its total assets at the end of the tax year less than $250,000? If "Yes," the corporation is not required to complete Schedules L and M-1		

Schedule K Shareholders' Pro Rata Share Items

			Total amount
Income (Loss)	1 Ordinary business income (loss) (page 1, line 21)	1	
	2 Net rental real estate income (loss) *(attach Form 8825)*	2	
	3a Other gross rental income (loss) 3a		
	b Expenses from other rental activities *(attach statement)* 3b		
	c Other net rental income (loss). Subtract line 3b from line 3a	3c	
	4 Interest income	4	
	5 Dividends: a Ordinary dividends	5a	
	b Qualified dividends 5b		
	6 Royalties	6	
	7 Net short-term capital gain (loss) *(attach Schedule D (Form 1120S))*	7	
	8a Net long-term capital gain (loss) *(attach Schedule D (Form 1120S))*	8a	
	b Collectibles (28%) gain (loss) 8b		
	c Unrecaptured section 1250 gain *(attach statement)* 8c		
	9 Net section 1231 gain (loss) *(attach Form 4797)*	9	
	10 Other income (loss) *(see instructions)* Type ▶	10	

	Shareholders' Pro Rata Share Items (continued)		Total amount
Deductions	11 Section 179 deduction *(attach Form 4562)*	11	
	12a Contributions	12a	
	b Investment interest expense	12b	
	c Section 59(e)(2) expenditures (1) Type ▶ ..... (2) Amount ▶	12c(2)	
	d Other deductions *(see instructions)* Type ▶	12d	
Credits	13a Low-income housing credit (section 42(j)(5))	13a	
	b Low-income housing credit (other)	13b	
	c Qualified rehabilitation expenditures (rental real estate) *(attach Form 3468)*	13c	
	d Other rental real estate credits *(see instructions)* Type ▶	13d	
	e Other rental credits (see instructions) Type ▶	13e	
	f Credit for alcohol used as fuel *(attach Form 6478)*	13f	
	g Other credits *(see instructions)* Type ▶	13g	
Foreign Transactions	14a Name of country or U.S. possession ▶		
	b Gross income from all sources	14b	
	c Gross income sourced at shareholder level	14c	
	Foreign gross income sourced at corporate level		
	d Passive category	14d	
	e General category	14e	
	f Other *(attach statement)*	14f	
	Deductions allocated and apportioned at shareholder level		
	g Interest expense	14g	
	h Other	14h	
	Deductions allocated and apportioned at corporate level to foreign source income		
	i Passive category	14i	
	j General category	14j	
	k Other *(attach statement)*	14k	
	Other information		
	l Total foreign taxes (check one): ▶ ☐ Paid ☐ Accrued	14l	
	m Reduction in taxes available for credit *(attach statement)*	14m	
	n Other foreign tax information *(attach statement)*		
Alternative Minimum Tax (AMT) Items	15a Post-1986 depreciation adjustment	15a	
	b Adjusted gain or loss	15b	
	c Depletion (other than oil and gas)	15c	
	d Oil, gas, and geothermal properties—gross income	15d	
	e Oil, gas, and geothermal properties—deductions	15e	
	f Other AMT items *(attach statement)*	15f	
Items Affecting Shareholder Basis	16a Tax-exempt interest income	16a	
	b Other tax-exempt income	16b	
	c Nondeductible expenses	16c	
	d Property distributions	16d	
	e Repayment of loans from shareholders	16e	
Other Information	17a Investment income	17a	
	b Investment expenses	17b	
	c Dividend distributions paid from accumulated earnings and profits	17c	
	d Other items and amounts *(attach statement)*		
Reconciliation	18 **Income/loss reconciliation.** Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and 14l	18	

Schedule L Balance Sheets per Books

Assets	Beginning of tax year (a)	Beginning of tax year (b)	End of tax year (c)	End of tax year (d)
1 Cash				
2a Trade notes and accounts receivable				
b Less allowance for bad debts	( )		( )	
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities *(see instructions)*				
6 Other current assets *(attach statement)*				
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments *(attach statement)*				
10a Buildings and other depreciable assets				
b Less accumulated depreciation	( )		( )	
11a Depletable assets				
b Less accumulated depletion	( )		( )	
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization	( )		( )	
14 Other assets *(attach statement)*				
15 Total assets				
Liabilities and Shareholders' Equity				
16 Accounts payable				
17 Mortgages, notes, bonds payable in less than 1 year				
18 Other current liabilities *(attach statement)*				
19 Loans from shareholders				
20 Mortgages, notes, bonds payable in 1 year or more				
21 Other liabilities *(attach statement)*				
22 Capital stock				
23 Additional paid-in capital				
24 Retained earnings				
25 Adjustments to shareholders' equity *(attach statement)*				
26 Less cost of treasury stock		( )		( )
27 Total liabilities and shareholders' equity				

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note: Schedule M-3 required instead of Schedule M-1 if total assets are $10 million or more—see instructions

1 Net income (loss) per books		5 Income recorded on books this year not included on Schedule K, lines 1 through 10 (itemize): a Tax-exempt interest $	
2 Income included on Schedule K, lines 1, 2, 3c, 4, 5a, 6, 7, 8a, 9, and 10, not recorded on books this year (itemize):			
3 Expenses recorded on books this year not included on Schedule K, lines 1 through 12 and 14l (itemize): a Depreciation $ b Travel and entertainment $		6 Deductions included on Schedule K, lines 1 through 12 and 14l, not charged against book income this year (itemize): a Depreciation $	
4 Add lines 1 through 3		7 Add lines 5 and 6	
		8 Income (loss) (Schedule K, line 18). Line 4 less line 7	

Schedule M-2 Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed (see instructions)

	(a) Accumulated adjustments account	(b) Other adjustments account	(c) Shareholders' undistributed taxable income previously taxed
1 Balance at beginning of tax year			
2 Ordinary income from page 1, line 21			
3 Other additions			
4 Loss from page 1, line 21	( )		
5 Other reductions	( )	( )	
6 Combine lines 1 through 5			
7 Distributions other than dividend distributions			
8 Balance at end of tax year. Subtract line 7 from line 6			

651107

☐ Final K-1 ☐ Amended K-1 OMB No. 1545-0099

Schedule K-1 (Form 1065) **2007**

Department of the Treasury
Internal Revenue Service

For calendar year 2007, or tax year beginning _____, 2007
ending _____, 20____

Partner's Share of Income, Deductions, Credits, etc.

▶ See back of form and separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

TRAINING EXAMPLE

C IRS Center where partnership filed return

D ☐ Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number

F Partner's name, address, city, state, and ZIP code

G ☐ General partner or LLC member-manager ☐ Limited partner or other LLC member

H ☑ Domestic partner ☐ Foreign partner

I What type of entity is this partner? _____

J Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	%	98 %
Loss	%	98 %
Capital	%	98 %

K Partner's share of liabilities at year end:

Nonrecourse . . . . . $ _____
Qualified nonrecourse financing . $ _____
Recourse . . . . . $ _____

L Partner's capital account analysis:

Beginning capital account . . . $ 0
Capital contributed during the year $ 398,000
Current year increase (decrease) . $ _____
Withdrawals & distributions . . $ (?)
Ending capital account . . . . $ 405,379

☐ Tax basis ☐ GAAP ☐ Section 704(b) book
☐ Other (explain)

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss) 4,503	15	Credits
2	Net rental real estate income (loss)		
3	Other net rental income (loss)	16	Foreign transactions
4	Guaranteed payments ?		
5	Interest income 2,876		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
9b	Collectibles (28%) gain (loss)		
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss)		
		19	Distributions ?
12	Section 179 deduction		
13	Other deductions	20	Other information
14	Self-employment earnings (loss)		

*See attached statement for additional information.

For IRS Use Only

For Paperwork Reduction Act Notice, see Instructions for Form 1065. Cat. No. 11394R Schedule K-1 (Form 1065) 2007

This list identifies the codes used on Schedule K-1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.

		Report on
1.	**Ordinary business income (loss).** You must first determine whether the income (loss) is passive or nonpassive. Then enter on your return as follows:	
	Passive loss	See the Partner's Instructions
	Passive income	Schedule E, line 28, column (g)
	Nonpassive loss	Schedule E, line 28, column (h)
	Nonpassive income	Schedule E, line 28, column (j)
2.	**Net rental real estate income (loss)**	See the Partner's Instructions
3.	**Other net rental income (loss)**	
	Net income	Schedule E, line 28, column (g)
	Net loss	See the Partner's Instructions
4.	**Guaranteed payments**	Schedule E, line 28, column (j)
5.	**Interest income**	Form 1040, line 8a
6a.	**Ordinary dividends**	Form 1040, line 9a
6b.	**Qualified dividends**	Form 1040, line 9b
7.	**Royalties**	Schedule E, line 4
8.	**Net short-term capital gain (loss)**	Schedule D, line 5, column (f)
9a.	**Net long-term capital gain (loss)**	Schedule D, line 12, column (f)
9b.	**Collectibles (28%) gain (loss)**	28% Rate Gain Worksheet, line 4 (Schedule D instructions)
9c.	**Unrecaptured section 1250 gain**	See the Partner's Instructions
10.	**Net section 1231 gain (loss)**	See the Partner's Instructions
11.	**Other income (loss)**	
	Code	
	A Other portfolio income (loss)	See the Partner's Instructions
	B Involuntary conversions	See the Partner's Instructions
	C Sec. 1256 contracts & straddles	Form 6781, line 1
	D Mining exploration costs recapture	See Pub. 535
	E Cancellation of debt	Form 1040, line 21 or Form 982
	F Other income (loss)	See the Partner's Instructions
12.	**Section 179 deduction**	See the Partner's Instructions
13.	**Other deductions**	
	A Cash contributions (50%)	See the Partner's Instructions
	B Cash contributions (30%)	
	C Noncash contributions (50%)	
	D Noncash contributions (30%)	
	E Capital gain property to a 50% organization (30%)	
	F Capital gain property (20%)	
	G Investment interest expense	Form 4952, line 1
	H Deductions—royalty income	Schedule E, line 18
	I Section 59(e)(2) expenditures	See the Partner's Instructions
	J Deductions—portfolio (2% floor)	Schedule A, line 23
	K Deductions—portfolio (other)	Schedule A, line 28
	L Amounts paid for medical insurance	Schedule A, line 1 or Form 1040, line 29
	M Educational assistance benefits	See the Partner's Instructions
	N Dependent care benefits	Form 2441, line 14
	O Preproductive period expenses	See the Partner's Instructions
	P Commercial revitalization deduction from rental real estate activities	See Form 8582 Instructions
	Q Pensions and IRAs	See the Partner's Instructions
	R Reforestation expense deduction	See the Partner's Instructions
	S Domestic production activities information	See Form 8903 instructions
	T Qualified production activities income	Form 8903, line 7
	U Employer's Form W-2 wages	Form 8903, line 15
	V Other deductions	See the Partner's Instructions
14.	**Self-employment earnings (loss)**	
	Note. *If you have a section 179 deduction or any partner-level deductions, see the Partner's Instructions before completing Schedule SE.*	
	A Net earnings (loss) from self-employment	Schedule SE, Section A or B
	B Gross farming or fishing income	See the Partner's Instructions
	C Gross non-farm income	See the Partner's Instructions
15.	**Credits**	
	A Low-income housing credit (section 42(j)(5))	See the Partner's Instructions
	B Low-income housing credit (other)	
	C Qualified rehabilitation expenditures (rental real estate)	
	D Other rental real estate credits	
	E Other rental credits	
	F Undistributed capital gains credit	Form 1040, line 70; check box a
	G Credit for alcohol used as fuel	See the Partner's Instructions
	H Work opportunity credit	
	I Welfare-to-work credit	
	J Disabled access credit	
	K Empowerment zone and renewal community employment credit	Form 8844, line 3
	L Credit for increasing research activities	See the Partner's Instructions
	M New markets credit	
	N Credit for employer social security and Medicare taxes	
	O Backup withholding	Form 1040, line 64
	P Other credits	See the Partner's Instructions
16.	**Foreign transactions**	
	A Name of country or U.S. possession	Form 1116, Part I
	B Gross income from all sources	
	C Gross income sourced at partner level	
	Foreign gross income sourced at partnership level	
	D Passive category	Form 1116, Part I
	E General category	
	F Other	
	Deductions allocated and apportioned at partner level	
	G Interest expense	Form 1116, Part I
	H Other	Form 1116, Part I
	Deductions allocated and apportioned at partnership level to foreign source income	
	I Passive category	Form 1116, Part I
	J General category	
	K Other	
	Other information	
	L Total foreign taxes paid	Form 1116, Part II
	M Total foreign taxes accrued	Form 1116, Part II
	N Reduction in taxes available for credit	Form 1116, line 12
	O Foreign trading gross receipts	Form 8873
	P Extraterritorial income exclusion	Form 8873
	Q Other foreign transactions	See the Partner's Instructions
17.	**Alternative minimum tax (AMT) items**	
	A Post-1986 depreciation adjustment	See the Partner's Instructions and the Instructions for Form 6251
	B Adjusted gain or loss	
	C Depletion (other than oil & gas)	
	D Oil, gas, & geothermal—gross income	
	E Oil, gas, & geothermal—deductions	
	F Other AMT items	
18.	**Tax-exempt income and nondeductible expenses**	
	A Tax-exempt interest income	Form 1040, line 8b
	B Other tax-exempt income	See the Partner's Instructions
	C Nondeductible expenses	See the Partner's Instructions
19.	**Distributions**	
	A Cash and marketable securities	See the Partner's Instructions
	B Other property	See the Partner's Instructions
20.	**Other information**	
	A Investment income	Form 4952, line 4a
	B Investment expenses	Form 4952, line 5
	C Fuel tax credit information	Form 4136
	D Qualified rehabilitation expenditures (other than rental real estate)	See the Partner's Instructions
	E Basis of energy property	See the Partner's Instructions
	F Recapture of low-income housing credit (section 42(j)(5))	Form 8611, line 8
	G Recapture of low-income housing credit (other)	Form 8611, line 8
	H Recapture of investment credit	See Form 4255
	I Recapture of other credits	See the Partner's Instructions
	J Look-back interest—completed long-term contracts	See Form 8697
	K Look-back interest—income forecast method	See Form 8866
	L Dispositions of property with section 179 deductions	See the Partner's Instructions
	M Recapture of section 179 deduction	
	N Interest expense for corporate partners	
	O Section 453(l)(3) information	
	P Section 453A(c) information	
	Q Section 1260(b) information	
	R Interest allocable to production expenditures	
	S CCF nonqualified withdrawals	
	T Information needed to figure depletion—oil and gas	
	U Amortization of reforestation costs	
	V Unrelated business taxable income	
	W Other information	

Form **1120**
Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 2007 or tax year beginning ..... , 2007, ending ..... , 20 ....
▶ See separate instructions.

OMB No. 1545-0123

2007

A Check if:
1a Consolidated return (attach Form 851) ☐
b Life/nonlife consolidated return ☐
2 Personal holding co. (attach Sch. PH) ☐
3 Personal service corp. (see instructions) ☐
4 Schedule M-3 attached ☐

Use IRS label. Otherwise, print or type.

Name: **TRAINING EXAMPLE**
Number, street, and room or suite no. If a P.O. box, see instructions.
City or town, state, and ZIP code: ??

B Employer identification number
C Date incorporated: ??
D Total assets (see instructions): $ 678,023

E Check if: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change

Income	1a	Gross receipts or sales 1,099,694 b Less returns and allowances ____ c Bal ▶	1c	1,099,694
	2	Cost of goods sold (Schedule A, line 8)	2	567,573
	3	Gross profit. Subtract line 2 from line 1c	3	532,121
	4	Dividends (Schedule C, line 19)	4	
	5	Interest	5	
	6	Gross rents	6	
	7	Gross royalties	7	
	8	Capital gain net income (attach Schedule D (Form 1120))	8	
	9	Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)	9	
	10	Other income (see instructions—attach schedule)	10	
	11	**Total income.** Add lines 3 through 10 ▶	11	532,121
Deductions (See instructions for limitations on deductions.)	12	Compensation of officers (Schedule E, line 4)	12	61,536
	13	Salaries and wages (less employment credits)	13	187,851
	14	Repairs and maintenance	14	354
	15	Bad debts	15	9,175
	16	Rents	16	33,584
	17	Taxes and licenses	17	10,240
	18	Interest	18	11,260
	19	Charitable contributions	19	
	20	Depreciation from Form 4562 not claimed on Schedule A or elsewhere on return (attach Form 4562)	20	28,191
	21	Depletion	21	
	22	Advertising	22	
	23	Pension, profit-sharing, etc., plans	23	
	24	Employee benefit programs	24	
	25	Domestic production activities deduction (attach Form 8903)	25	
	26	Other deductions (attach schedule)	26	174,163
	27	**Total deductions.** Add lines 12 through 26 ▶	27	516,354
	28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11	28	15,767
	29	**Less:** a Net operating loss deduction (see instructions) 29a		
		b Special deductions (Schedule C, line 20) 29b	29c	
Tax and Payments	30	**Taxable income.** Subtract line 29c from line 28 (see instructions)	30	15,767
	31	**Total tax** (Schedule J, line 10)	31	2,365
	32a	2006 overpayment credited to 2007 32a		
	b	2007 estimated tax payments 32b		
	c	2007 refund applied for on Form 4466 32c ( ) d Bal ▶ 32d		
	e	Tax deposited with Form 7004 32e		
	f	Credits: (1) Form 2439 ____ (2) Form 4136 ____ 32f	32g	
	33	Estimated tax penalty (see instructions). Check if Form 2220 is attached ▶ ☑	33	98
	34	**Amount owed.** If line 32g is smaller than the total of lines 31 and 33, enter amount owed	34	2,463
	35	**Overpayment.** If line 32g is larger than the total of lines 31 and 33, enter amount overpaid	35	
	36	Enter amount from line 35 you want: **Credited to 2008 estimated tax** ▶ **Refunded** ▶	36	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer ____ Date ____ ▶ Title ____

May the IRS discuss this return with the preparer shown below (see instructions)? ☐ Yes ☐ No

Paid Preparer's Use Only

Preparer's signature ▶ | Date | Check if self-employed ☐ | Preparer's SSN or PTIN

Firm's name (or yours if self-employed), address, and ZIP code ▶ | EIN | Phone no. ( )

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 11450Q Form **1120** (2007)

Schedule A Cost of Goods Sold (see instructions)

1	Inventory at beginning of year	1	478,660	
2	Purchases	2	534,729	
3	Cost of labor	3		
4	Additional section 263A costs (attach schedule)	4		
5	Other costs (attach schedule)	5	47,379	
6	**Total.** Add lines 1 through 5	6	1,060,768	
7	Inventory at end of year	7	493,195	
8	**Cost of goods sold.** Subtract line 7 from line 6. Enter here and on page 1, line 2	8	567,573	

9a Check all methods used for valuing closing inventory:
- (i) ☐ Cost
- (ii) ☑ Lower of cost or market
- (iii) ☐ Other (Specify method used and attach explanation.) ▶

b Check if there was a writedown of subnormal goods ▶ ☐

c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ ☐

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO — 9d

e If property is produced or acquired for resale, do the rules of section 263A apply to the corporation? ☑ Yes ☐ No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☑ No

Schedule C Dividends and Special Deductions (see instructions)

		(a) Dividends received	(b) %	(c) Special deductions (a) × (b)
1	Dividends from less-than-20%-owned domestic corporations (other than debt-financed stock)		70	
2	Dividends from 20%-or-more-owned domestic corporations (other than debt-financed stock)		80	
3	Dividends on debt-financed stock of domestic and foreign corporations		see instructions	
4	Dividends on certain preferred stock of less-than-20%-owned public utilities		42	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities		48	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs		70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs		80	
8	Dividends from wholly owned foreign subsidiaries		100	
9	**Total.** Add lines 1 through 8. See instructions for limitation			
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11	Dividends from affiliated group members		100	
12	Dividends from certain FSCs		100	
13	Dividends from foreign corporations not included on lines 3, 6, 7, 8, 11, or 12			
14	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)			
15	Foreign dividend gross-up			
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3			
17	Other dividends			
18	Deduction for dividends paid on certain preferred stock of public utilities			
19	**Total dividends.** Add lines 1 through 17. Enter here and on page 1, line 4 ▶			
20	**Total special deductions.** Add lines 9, 10, 11, 12, and 18. Enter here and on page 1, line 29b ▶			

Schedule E Compensation of Officers (see instructions for page 1, line 12)

Note: *Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1) are $500,000 or more.*

(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned (d) Common	(e) Preferred	(f) Amount of compensation
1 **ALIEN OWNER?**		100 %	100 %	%	61,536
		%	%	%	
		%	%	%	
		%	%	%	
		%	%	%	

2	Total compensation of officers	61,536
3	Compensation of officers claimed on Schedule A and elsewhere on return	
4	Subtract line 3 from line 2. Enter the result here and on page 1, line 12	

Schedule J Tax Computation (see instructions)

1	Check if the corporation is a member of a controlled group (attach Schedule O (Form 1120)) ▶ ☐			
2	Income tax. Check if a qualified personal service corporation (see instructions) ▶ ☐		2	
3	Alternative minimum tax (attach Form 4626)		3	
4	Add lines 2 and 3		4	
5a	Foreign tax credit (attach Form 1118)	5a		
b	Credits from Forms 5735 and 8834	5b		
c	General business credit. Check applicable box(es): ☐ Form 3800 ☐ Form 5884 ☐ Form 6478 ☐ Form 8835, Section B ☐ Form 8844 ☐ Form 8846	5c		
d	Credit for prior year minimum tax (attach Form 8827)	5d		
e	Bond credits from: ☐ Form 8860 ☐ Form 8912	5e		
6	**Total credits.** Add lines 5a through 5e		6	
7	Subtract line 6 from line 4		7	
8	Personal holding company tax (attach Schedule PH (Form 1120))		8	
9	Other taxes. Check if from: ☐ Form 4255 ☐ Form 8611 ☐ Form 8697 ☐ Form 8866 ☐ Form 8902 ☐ Other (attach schedule)		9	
10	**Total tax.** Add lines 7 through 9. Enter here and on page 1, line 31		10	2,365

Schedule K Other Information (see instructions)

		Yes	No
1	Check accounting method: a ☐ Cash b ☐ Accrual c ☐ Other (specify) ▶		
2	See the instructions and enter the:		
a	Business activity code no. ▶		
b	Business activity ▶ ?????		
c	Product or service ▶ ?????		
3	At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) If "Yes," attach a schedule showing: (a) name and employer identification number (EIN), (b) percentage owned, and (c) taxable income or (loss) before NOL and special deduction of such corporation for the tax year ending with or within your tax year.		✓
4	Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group? If "Yes," enter name and EIN of the parent corporation ▶		✓
5	At the end of the tax year, did any individual, partnership, corporation, estate, or trust own, directly or indirectly, 50% or more of the corporation's voting stock? (For rules of attribution, see section 267(c).) If "Yes," attach a schedule showing name and identifying number. (Do not include any information already entered in 4 above.) Enter percentage owned ▶ 100	✓	
6	During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.) If "Yes," file **Form 5452,** Corporate Report of Nondividend Distributions. If this is a consolidated return, answer here for the parent corporation and on **Form 851,** Affiliations Schedule, for each subsidiary.		✓

		Yes	No
7	At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of **(a)** the total voting power of all classes of stock of the corporation entitled to vote or **(b)** the total value of all classes of stock of the corporation? If "Yes," enter: **(a)** Percentage owned ▶ and **(b)** Owner's country ▶		✓
c	The corporation may have to file **Form 5472,** Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter number of Forms 5472 attached ▶		
8	Check this box if the corporation issued publicly offered debt instruments with original issue discount ▶ ☐ If checked, the corporation may have to file **Form 8281,** Information Return for Publicly Offered Original Issue Discount Instruments.		
9	Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $		
10	Enter the number of shareholders at the end of the tax year (if 100 or fewer) ▶		
11	If the corporation has an NOL for the tax year and is electing to forego the carryback period, check here ▶ ☐ If the corporation is filing a consolidated return, the statement required by Regulations section 1.1502-21(b)(3) must be attached or the election will not be valid.		
12	Enter the available NOL carryover from prior tax years (Do not reduce it by any deduction on line 29a.) ▶ $		
13	Are the corporation's total receipts (line 1a plus lines 4 through 10 on page 1) for the tax year **and** its total assets at the end of the tax year less than $250,000? If "Yes," the corporation is not required to complete Schedules L, M-1, and M-2 on page 4. Instead, enter the total amount of cash distributions and the book value of property distributions (other than cash) made during the tax year. ▶ $		✓

Schedule L Balance Sheets per Books

Assets	Beginning of tax year (a)	Beginning of tax year (b)	End of tax year (c)	End of tax year (d)
1 Cash		49,241		57,686
2a Trade notes and accounts receivable	106,698		104,287	
b Less allowance for bad debts	(15,000)	91,698	(15,000)	89,287
3 Inventories		445,051		459,051
4 U.S. government obligations				
5 Tax-exempt securities (see instructions)				
6 Other current assets (attach schedule)				
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach schedule)				
10a Buildings and other depreciable assets	598,850		598,850	
b Less accumulated depreciation	(495,485)	103,365	(526,851)	71,999
11a Depletable assets				
b Less accumulated depletion	( )		( )	
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization	( )		( )	
14 Other assets (attach schedule)				
15 Total assets		689,355		678,023
Liabilities and Shareholders' Equity				
16 Accounts payable		118,761		91,486
17 Mortgages, notes, bonds payable in less than 1 year		60,800		91,486
18 Other current liabilities (attach schedule)		973		
19 Loans from shareholders		140,000		140,000
20 Mortgages, notes, bonds payable in 1 year or more				
21 Other liabilities (attach schedule)				
22 Capital stock: a Preferred stock				
b Common stock	1,000	1,000	1,000	1,000
23 Additional paid-in capital		315,000		315,000
24 Retained earnings—Appropriated (attach schedule)				
25 Retained earnings—Unappropriated		52,821		65,727
26 Adjustments to shareholders' equity (attach schedule)				
27 Less cost of treasury stock		( )		( )
28 Total liabilities and shareholders' equity		689,355		678,023

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return

Note: Schedule M-3 required instead of Schedule M-1 if total assets are $10 million or more—see instructions

1 Net income (loss) per books	12,906	7 Income recorded on books this year not included on this return (itemize): Tax-exempt interest $	
2 Federal income tax per books	2,187		
3 Excess of capital losses over capital gains			
4 Income subject to tax not recorded on books this year (itemize):		8 Deductions on this return not charged against book income this year (itemize):	
5 Expenses recorded on books this year not deducted on this return (itemize):		a Depreciation $	
a Depreciation $		b Charitable contributions $	
b Charitable contributions $			
c Travel and entertainment $	674	9 Add lines 7 and 8	
6 Add lines 1 through 5	15,767	10 Income (page 1, line 28)—line 6 less line 9	

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1 Balance at beginning of year	52,821	5 Distributions: a Cash	
2 Net income (loss) per books	12,906	b Stock	
3 Other increases (itemize):		c Property	
		6 Other decreases (itemize):	
		7 Add lines 5 and 6	
4 Add lines 1, 2, and 3	65,727	8 Balance at end of year (line 4 less line 7)	65,727

OMB No. 1615-0026; Exp. 09/30/08

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-526, Immigrant Petition by Alien Entrepreneur

Do Not Write in This Block - For USCIS Use Only (Except G-28 Block Below)		
Classification _____	**Action Block**	Fee Receipt
Priority Date _____		**To be completed by Attorney or Representative, if any** ☐ G-28 is attached Attorney's State License No. _____
Remarks:		

START HERE - Type or print in black ink.

Part 1. Information about you.

Family Name | Given Name | Middle Name

Address:
In care of

Number and Street | Apt. #

City | State or Province | Country | Zip/Postal Code

Date of Birth (mm/dd/yyyy) | Country of Birth | Social Security # (if any) | A # (if any)

If you are in the United States, provide the following information: Date of Arrival (mm/dd/yyyy) | I-94 #

Current Nonimmigrant Status | Date Current Status Expires (mm/dd/yyyy) | Daytime Phone # with Area Code

Part 2. Application type. (Check one)

a. ☐ This petition is based on an investment in a commercial enterprise in a targeted employment area for which the required amount of capital invested has been adjusted downward.

b. ☐ This petition is based on an investment in a commercial enterprise in an area for which the required amount of capital invested has been adjusted upward.

c. ☐ This petition is based on an investment in a commercial enterprise that is not in either a targeted area or in an upward adjustment area.

Part 3. Information about your investment.

Name of commercial enterprise in which funds are invested

Street Address

Phone # with Area Code | Business organized as (corporation, partnership, etc.)

Kind of business (e.g. furniture manufacturer) | Date established (mm/dd/yyyy) | IRS Tax #

RECEIVED: _____ RESUBMITTED: _____ RELOCATED: SENT _____ REC'D _____

Part 3. Information about your investment. (Continued.)

Date of your initial investment (mm/dd/yyyy)		Amount of your initial investment $	
Your total capital investment in the enterprise to date $		Percentage of the enterprise you own	

If you are not the sole investor in the new commercial enterprise, list on separate paper the names of all other parties (natural and non-natural) who hold a percentage share of ownership of the new enterprise and indicate whether any of these parties is seeking classification as an alien entrepreneur. Include the name, percentage of ownership and whether or not the person is seeking classification under section 203(b)(5). **NOTE:** A "natural" party would be an individual person and a "non-natural" party would be an entity such as a corporation, consortium, investment group, partnership, etc.

If you indicated in **Part 2** that the enterprise is in a targeted employment area or in an upward adjustment area, name the county and state: County State

Part 4. Additional information about the enterprise.

Type of Enterprise (check one):

- ☐ New commercial enterprise resulting from the creation of a new business.
- ☐ New commercial enterprise resulting from the purchase of an existing business.
- ☐ New commercial enterprise resulting from a capital investment in an existing business.

Composition of the Petitioner's Investment:

Total amount in U.S. bank account	$
Total value of all assets purchased for use in the enterprise	$
Total value of all property transferred from abroad to the new enterprise	$
Total of all debt financing	$
Total stock purchases	$
Other (explain on separate paper)	$
Total	$

Income:

When you made the investment	Gross	$		Net	$
Now	Gross	$		Net	$

Net worth:

When you made investment	Gross	$		Now	$

Part 5. Employment creation information.

Number of full-time employees in the enterprise in U.S. (excluding you, your spouse, sons and daughters)

When you made your initial investment? | Now | Difference

How many of these new jobs were created by your investment?

How many additional new jobs will be created by your additional investment?

What is your position, office or title with the new commercial enterprise?

Briefly describe your duties, activities and responsibilities.

What is your salary? $ | What is the cost of your benefits? $

Part 6. Processing information.

Check One:

☐ The person named in **Part 1** is now in the United States and an application to adjust status to permanent resident will be filed if this petition is approved.

☐ If the petition is approved and the person named in **Part 1** wishes to apply for an immigrant visa abroad, complete the following for that person:

Country of nationality:

Country of current residence or, if now in the United States, last permanent residence abroad:

If you provided a United States address in **Part 1**, print the person's foreign address:

If the person's native alphabet is other than Roman letters, write the foreign address in the native alphabet:

Is a Form I-485, Application for Adjustment of Status, attached to this petition? ☐ Yes ☐ No

Are you in deportation or removal proceedings? ☐ Yes (Explain on separate paper) ☐ No

Have you ever worked in the United States without permission? ☐ Yes (Explain on separate paper) ☐ No

Part 7. Signature. *Read the information on penalties in the instructions before completing this section.*

I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct. I authorize the release of any information from my records that the U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit I am seeking.

Signature | Date

NOTE: *If you do not completely fill out this form or fail to the submit the required documents listed in the instructions, you may not be found eligible for the immigration benefit you are seeking and this petition may be denied.*

Part 8. Signature of person preparing form, if other than above. (Sign below)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

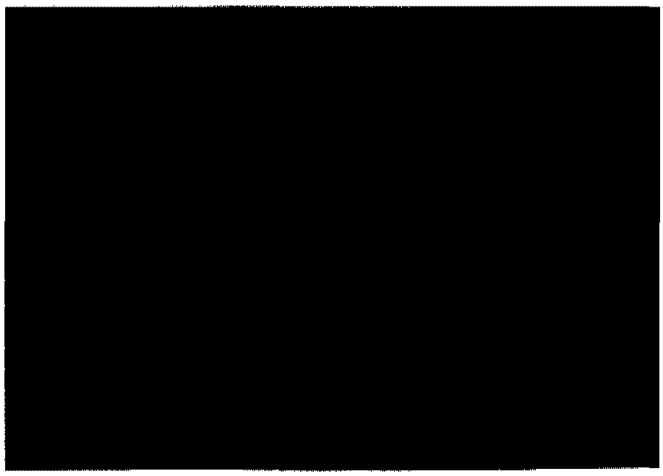
Signature | Print Your Name | Date

Firm Name

Address

Daytime phone # with area code


U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. Citizenship and Immigration Services



IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

INA § 203 [8 U.S.C. 1153]

(b) Preference Allocation for Employment-Based Immigrants. - Aliens subject to the worldwide level specified in section 201(d) for employment-based immigrants in a fiscal year shall be allotted visas as follows:

(5) Employment creation. –

(A) In general. - Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise (including a limited partnership)–

(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).

IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

8 CFR § 204.6 (e):

Employee **means an individual who provides services or labor for the new commercial enterprise and who receives wages or other remuneration directly from the new commercial enterprise. In the case of the Immigrant Investor Pilot Program, "employee" also means an individual who provides services or labor in a job which has been created indirectly through investment in the new commercial enterprise. This definition shall not include independent contractors.**

IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

8 CFR § 204.6 (e):

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. In the case of the Immigrant Investor Pilot Program, "full-time employment" also means employment of a qualifying employee in a position that has been created indirectly through revenues generated from increased exports resulting from the Pilot Program 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.

IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

8 CFR § 204.6 (e):

Qualifying employee means a United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation. This definition does not include the alien entrepreneur, the alien entrepreneur's spouse, sons, or daughters, or any nonimmigrant alien.

IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

8 CFR § 204.6 (e):

Targeted employment area means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

Rural area means any area not within either a metropolitan statistical area (as designated by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more.

IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

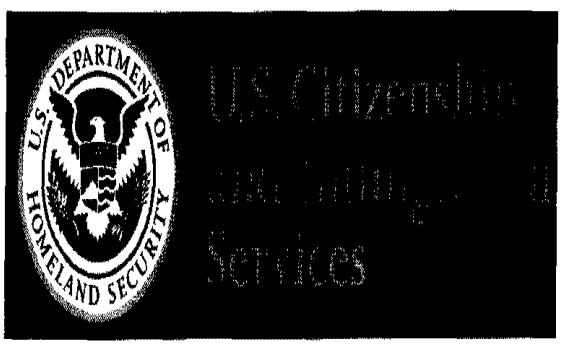
8 CFR § 204.6 (h)(3)(i):

State designation of a high unemployment area. The state government of any state of the United States may designate a particular geographic or political subdivision located within a metropolitan statistical area or within a city or town having a population of 20,000 or more within such state as an area of high unemployment (at least 150 percent of the national average rate). Evidence of such designation, including a description of the boundaries of the geographic or political subdivision and the method or methods by which the unemployment statistics were obtained, may be provided to a prospective alien entrepreneur for submission with Form I-526. Before any such designation is made, an official of the state must notify the...[Chief, Service Center Operations]... of the agency, board, or other appropriate governmental body of the state which shall be delegated the authority to certify that the geographic or political subdivision is a high unemployment area.

IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

INA § 101(a)

(36) The term "State" includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands .

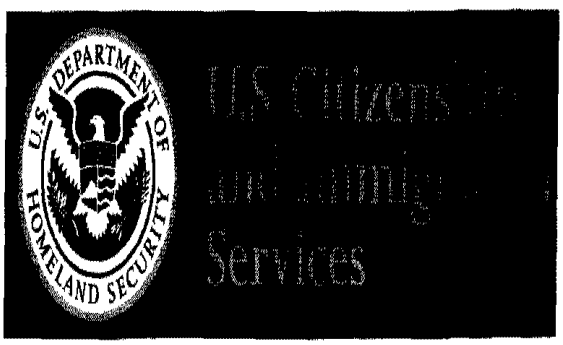


IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

8 CFR § 204.6 (j):

(6) If applicable, to show that the new commercial enterprise has created or will create employment in a targeted employment area, the petition must be accompanied by:

(i) In the case of a rural area, evidence that the new commercial enterprise is principally doing business within a civil jurisdiction not located within any standard metropolitan statistical area as designated by the Office of Management and Budget, or within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States; or



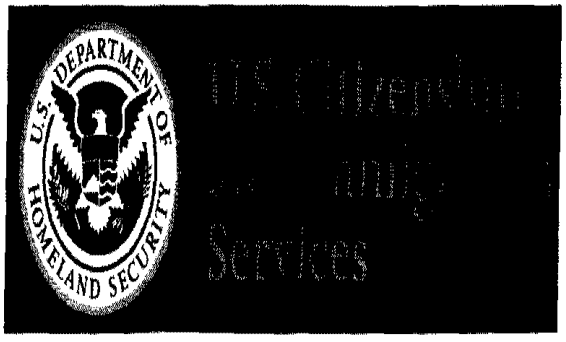
IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

8 CFR § 204.6 (j):

(ii) In the case of a high unemployment area:

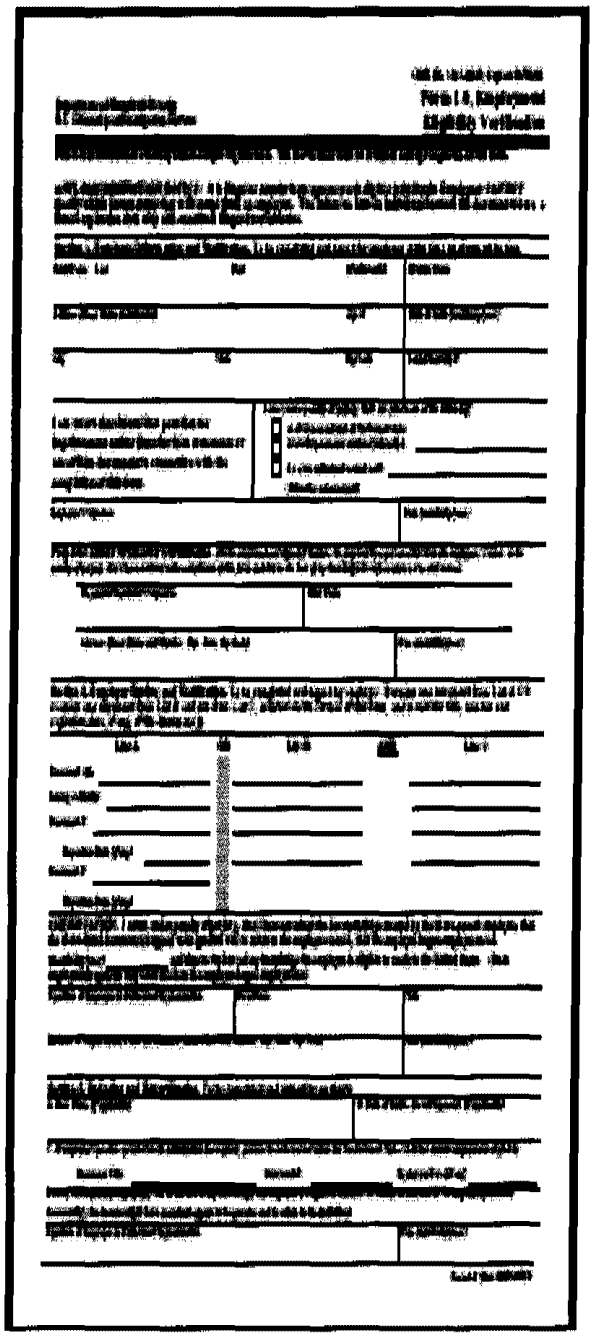
(A) Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business has experienced an average unemployment rate of 150 percent of the national average rate; or

(B) A letter from an authorized body of the government of the state in which the new commercial enterprise is located which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. The letter must meet the requirements of 8 CFR 204.6(i).



IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

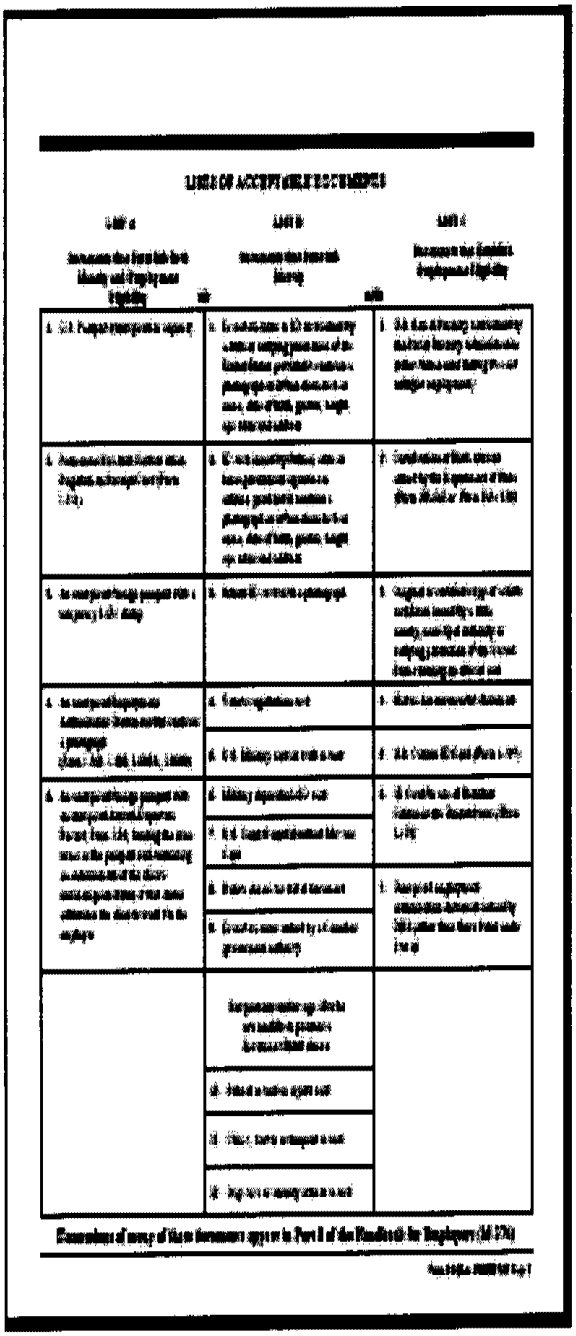
Form I-9



U.S. Citizenship and Immigration Services

IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

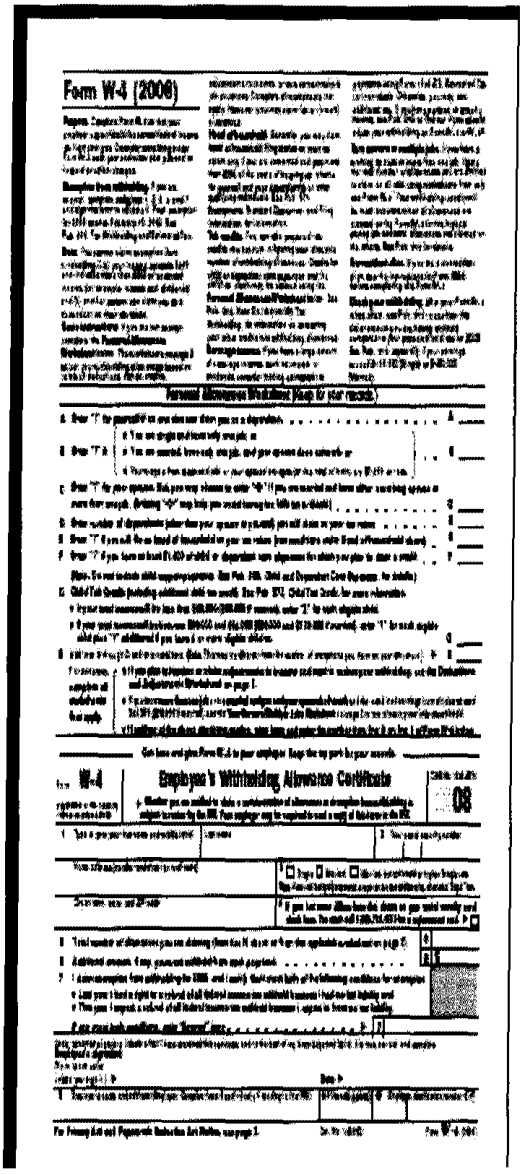
Form I-9



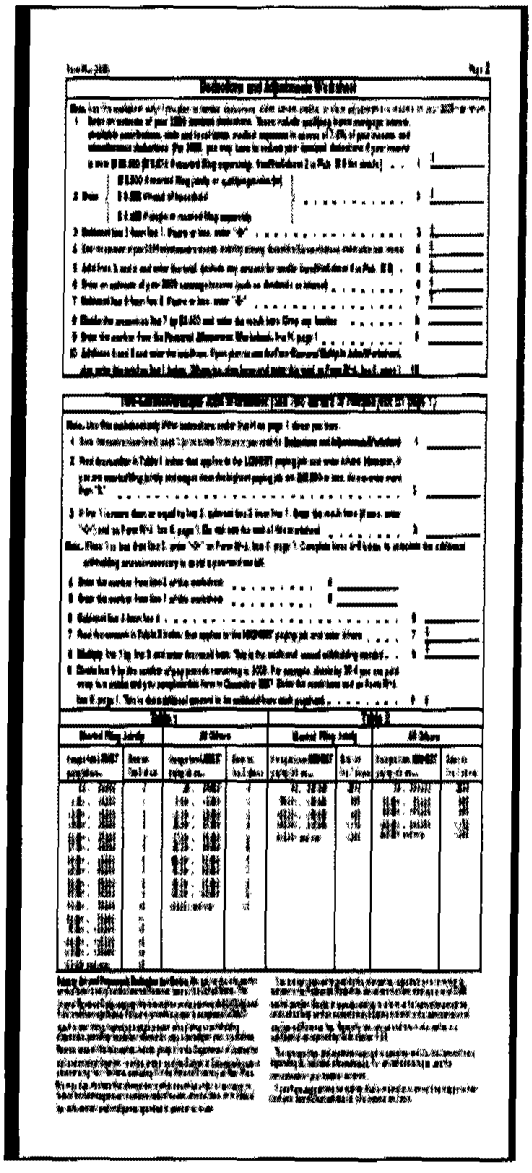
U.S. Citizenship and Immigration Services

IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

Form W-4 (2008)


Form W-4 (2008)

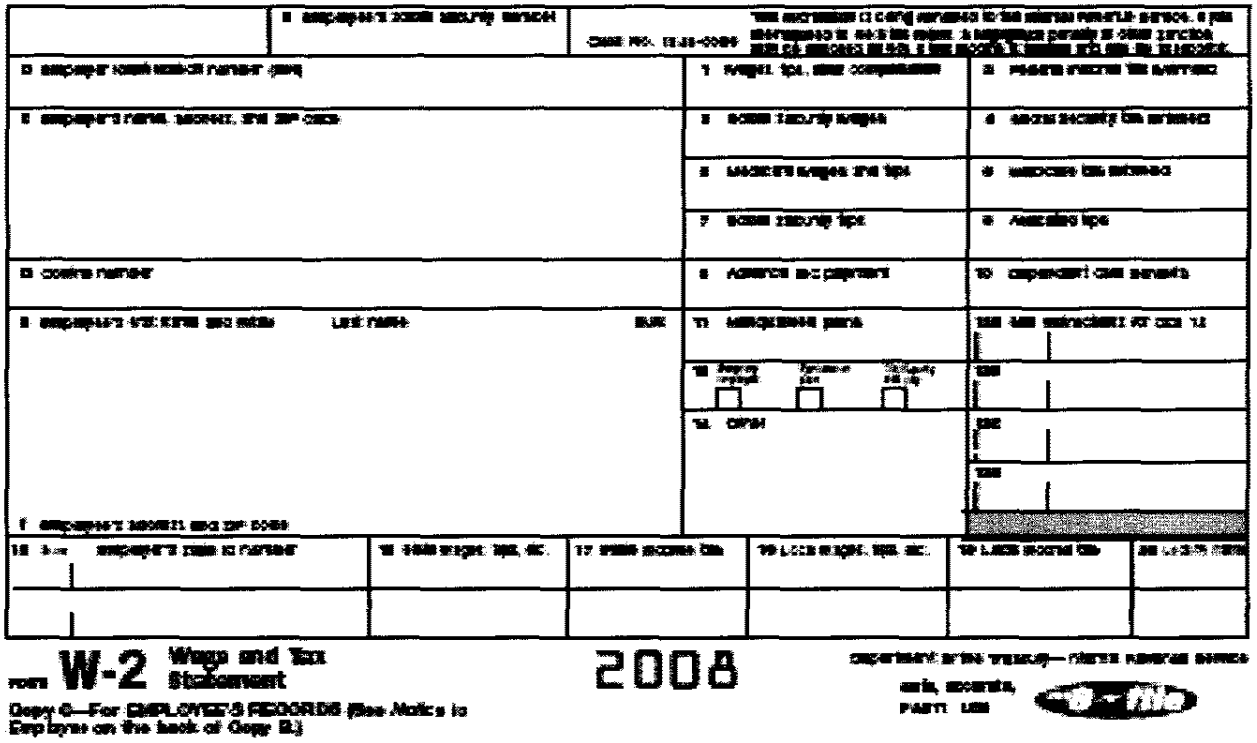
Employee's Withholding Allowance Certificate


Deductions and Adjustments Worksheet

US Citizenship and Immigration Services

IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

Form W-2



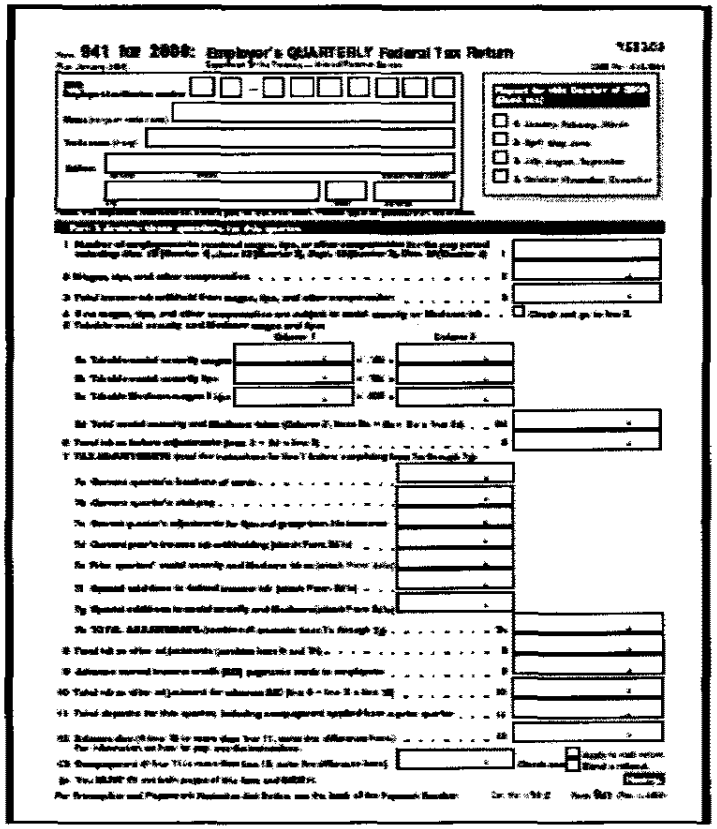
Form **W-2** Wage and Tax Statement **2008**

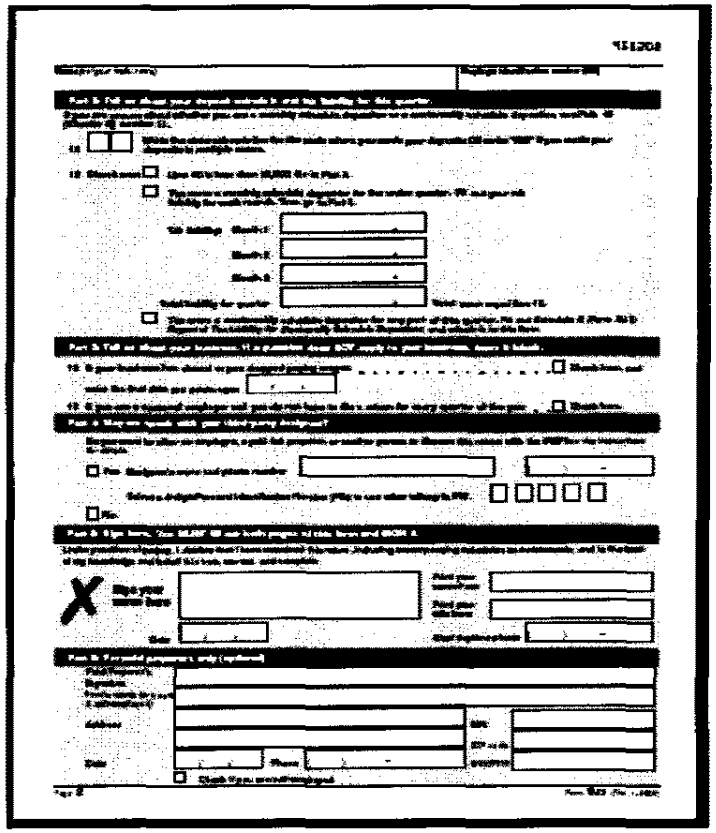
Department of the Treasury—Internal Revenue Service

Copy C—For EMPLOYEE'S RECORDS (See Notice to Employee on the back of Copy B.)

IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

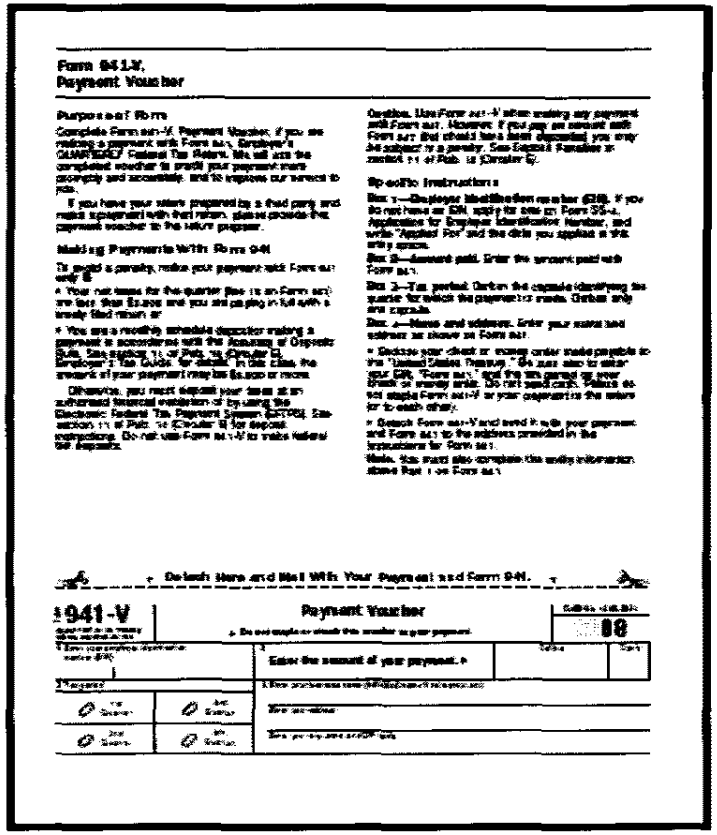
Form 941


941 for 2008: Employer's QUARTERLY Federal Tax Return



IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

Form 941



Form 941-V,
Payment Voucher

Purpose of Form

Complete Form 941-V, Payment Voucher, if you are making a payment with Form 941, Employer's QUARTERLY Federal Tax Return. We will use the completed voucher to credit your payment more promptly and accurately, and to improve our service to you.

If you have your return prepared by a third party and make a payment with that return, please provide this payment voucher to the return preparer.

Making Payments With Form 941

To avoid a penalty, make your payment with Form 941 only if:

- Your net taxes for the quarter (line 12 on Form 941) are less than $2,500 and you are paying in full with a timely filed return; or
- You are a monthly schedule depositor making a payment in accordance with the Accuracy of Deposits Rule. See section 11 of Pub. 15 (Circular E), Employer's Tax Guide, for details. In this case, the amount of your payment may be $2,500 or more.

Otherwise, you must deposit your taxes in an authorized financial institution or by using the Electronic Federal Tax Payment System (EFTPS). See section 11 of Pub. 15 (Circular E) for deposit instructions. Do not use Form 941-V to make federal tax deposits.

Caution. Use Form 941-V when making any payment with Form 941. However, if your payment with Form 941 for this quarter is less than $2,500 (or $2,500 or more if you were a monthly schedule depositor for the preceding quarter), you may be subject to a penalty. See Publication 15 (Circular E).

Specific Instructions

Box 1—Employer identification number (EIN). If you do not have an EIN, apply for one on Form SS-4, Application for Employer Identification Number, and write "Applied For" and the date you applied in this entry space.

Box 2—Amount paid. Enter the amount paid with Form 941.

Box 3—Tax period. Darken the oval(s) identifying the quarter for which the payment was made. Darken only one oval.

Box 4—Name and address. Enter your name and address as shown on Form 941.

- Enclose your check or money order made payable to the "United States Treasury." Be sure also to enter your EIN, "Form 941," and the tax period on your check or money order. Do not send cash. Please do not staple Form 941-V or your payment to the return (or to each other).
- Detach Form 941-V and send it with your payment and Form 941 to the address provided in the instructions for Form 941.

Note. You must also complete the entity information above Part 1 on Form 941.

Detach Here and Mail With Your Payment and Form 941.

941-V Payment Voucher

OMB No. 1545-0029

08

1 Enter your employer identification number (EIN).

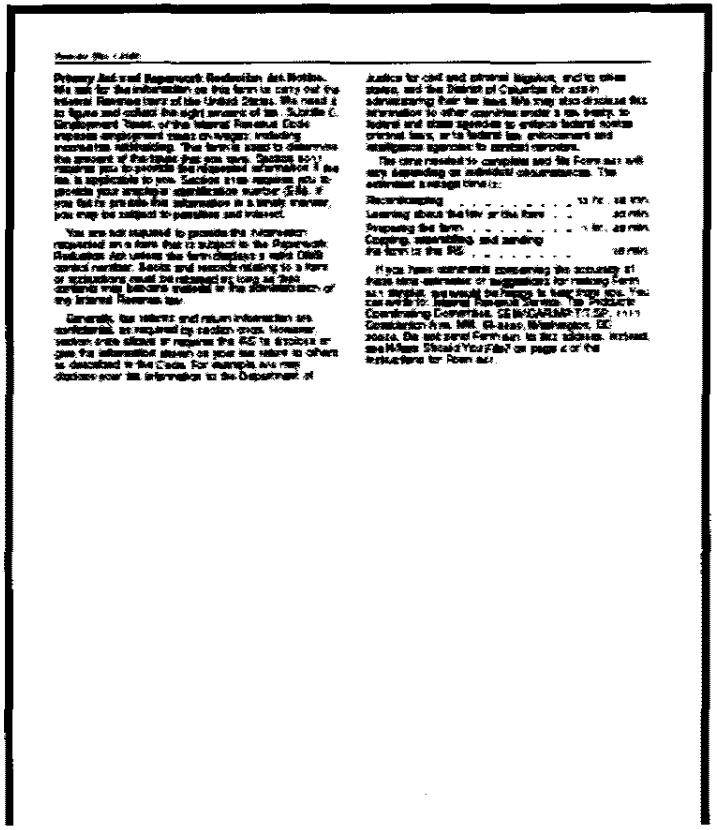
2 Enter the amount of your payment. ▸ Dollars | Cents

3 Payment:
- ☐ Check
- ☐ Money order

4 Enter business name (individual name if sole proprietor)

Enter address

Enter city, state, and ZIP code



Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to figure and collect the right amount of tax. Section 6109 of the Internal Revenue Code requires employers to provide their employer identification number (EIN). If you fail to provide this information in a timely manner, you may be subject to penalties and interest.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books and records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law.

Generally, tax returns and return information are confidential, as required by section 6103. However, section 6103 allows or requires the IRS to disclose or give the information shown on your tax return to others as described in the Code. For example, we may disclose your tax information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, and to federal law enforcement and intelligence agencies to combat terrorism.

The time needed to complete and file Form 941 will vary depending on individual circumstances. The estimated average time is:

Recordkeeping . . . . . 33 hr., 58 min.

Learning about the law or the form . . . . . 22 min.

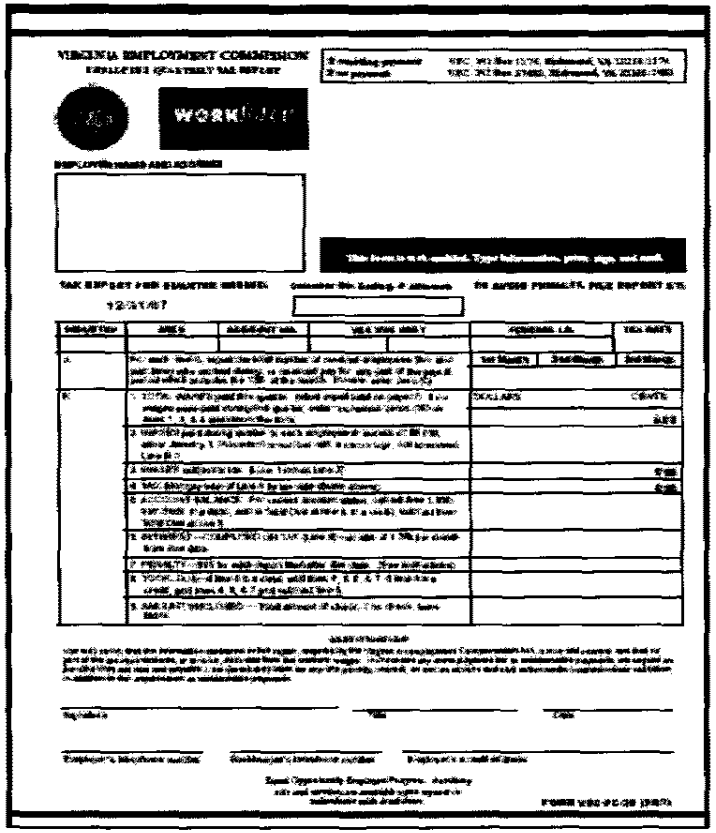
Preparing the form . . . . . 1 hr., 49 min.

Copying, assembling, and sending the form to the IRS . . . . . 28 min.

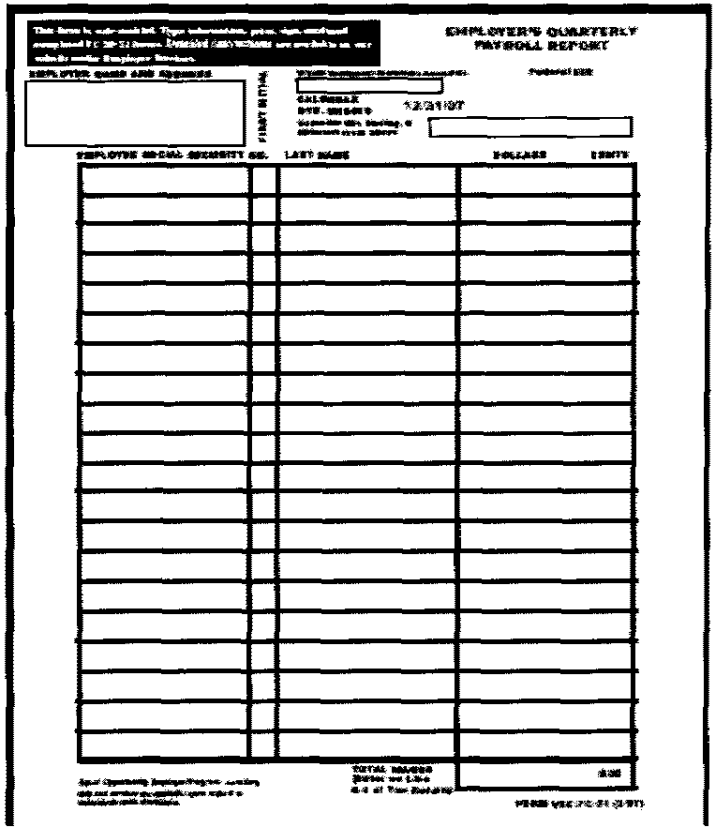
If you have comments concerning the accuracy of these time estimates or suggestions for making Form 941 simpler, we would be happy to hear from you. You can write to: Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, [illegible] Constitution Ave. NW, IR-6406, Washington, DC 20224. Do not send Form 941 to this address. Instead, see Where Should You File? on page 4 of the instructions for Form 941.

IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

Virginia Quarterly Employment Tax Report



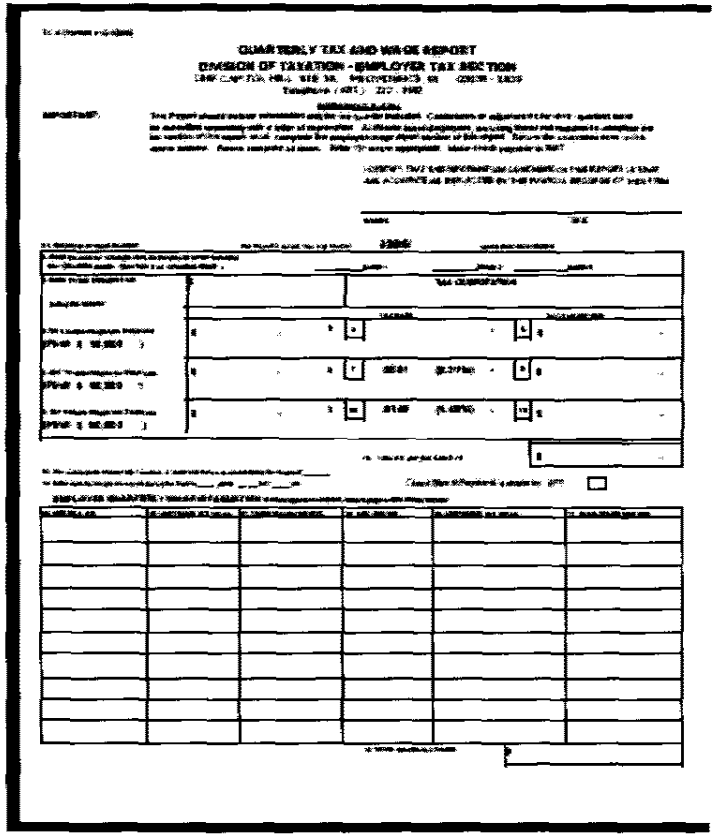
VIRGINIA EMPLOYMENT COMMISSION



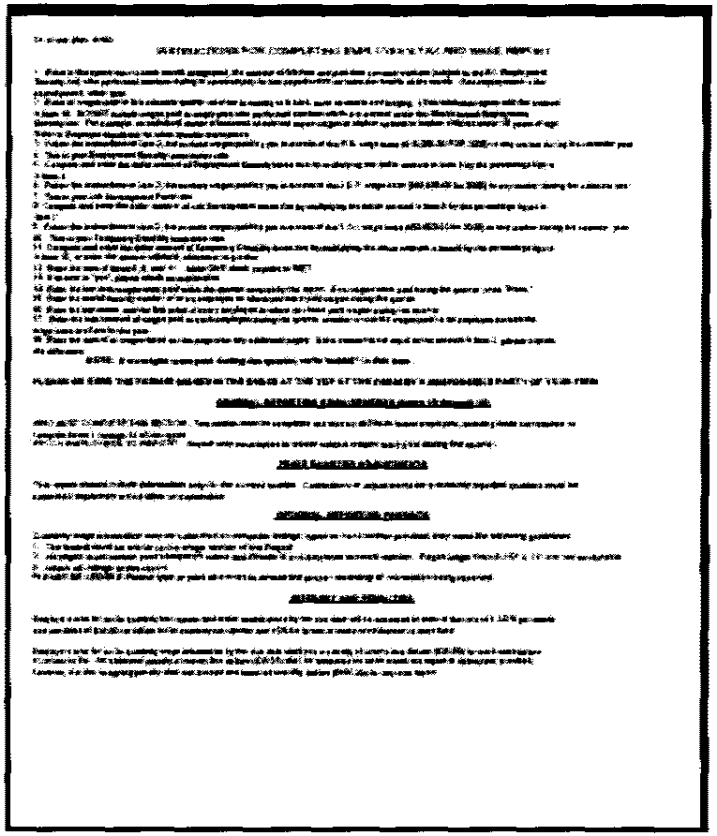
EMPLOYER'S QUARTERLY PAYROLL REPORT

IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

Rhode Island Quarterly Tax Report



QUARTERLY TAX AND WAGE REPORT
DIVISION OF TAXATION - EMPLOYER TAX SECTION



U.S. Citizenship and Immigration Services

IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

Questions?

[redacted]

REGIONAL CENTER-SPECIFIC ISSUES

8 CFR § 204.6

(j) *Initial evidence to accompany petition*...In the case of petitions submitted under the Immigrant Investor Pilot Program, a petition must be accompanied by evidence that the alien has invested, or is actively in the process of investing, capital obtained through lawful means within a regional center designated by...[USCIS]...in accordance with paragraph (m)(4) of this section. ***The petitioner may be required to submit information or documentation that...[USCIS]...deems appropriate in addition to that listed below.***

REGIONAL CENTER-SPECIFIC ISSUES

8 CFR § 204.6

(m) *Immigrant Investor Pilot Program--*

(4) *Submission of proposals to participate in the Immigrant Investor Pilot Program.* On August 24, 1993*,...[USCIS]...will accept proposals from regional centers seeking approval to participate in the Immigrant Investor Pilot Program. Regional centers that have been approved by the...[designee within Service Center Operations]...will be eligible to participate8 in the Immigrant Investor Pilot Program.

* No Regional Centers were allowed to participate prior to October 1, 1993. The oldest remaining active Regional Center in New Orleans, LA was designated on January 18, 1994, and re-affirmed on February 16, 2007.

REGIONAL CENTER-SPECIFIC ISSUES

8 CFR § 204.6

(m) *Immigrant Investor Pilot Program* — (3) *Requirements for regional centers.* Each regional center wishing to participate in the Immigrant Investor Pilot Program *shall submit a proposal* to the...[designee within Service Center Operations]..., which:

(i) Clearly describes how the regional center focuses on a geographical region of the United States, and how it will promote economic growth through increased export sales...[if any]..., improved regional productivity, job creation, and increased domestic capital investment;

REGIONAL CENTER-SPECIFIC ISSUES

8 CFR § 204.6

(m) *Immigrant Investor Pilot Program* — (3) *Requirements for regional centers.* Each regional center wishing to participate in the Immigrant Investor Pilot Program shall submit a proposal to the...[designee within Service Center Operations]..., which:

(ii) Provides in verifiable detail how jobs will be created indirectly...;

REGIONAL CENTER-SPECIFIC ISSUES

8 CFR § 204.6

(m) *Immigrant Investor Pilot Program* — (3) *Requirements for regional centers.* Each regional center wishing to participate in the Immigrant Investor Pilot Program shall submit a proposal to the...[designee within Service Center Operations]..., which:

(iii) Provides a detailed statement regarding the amount and source of capital which has been committed to the regional center, as well as a description of the promotional efforts taken and planned by the sponsors of the regional center;

REGIONAL CENTER-SPECIFIC ISSUES

8 CFR § 204.6

(m) *Immigrant Investor Pilot Program* — (3) *Requirements for regional centers.* Each regional center wishing to participate in the Immigrant Investor Pilot Program shall submit a proposal to the...[designee within Service Center Operations]..., which:

(iv) Contains a detailed prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy in general as reflected by such factors as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center; and

REGIONAL CENTER-SPECIFIC ISSUES

8 CFR § 204.6

(m) *Immigrant Investor Pilot Program* — (3) *Requirements for regional centers.* Each regional center wishing to participate in the Immigrant Investor Pilot Program shall submit a proposal to the...[designee within Service Center Operations]..., which:

(v) Is supported by economically or statistically valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services....., and/or multiplier tables.

REGIONAL CENTER-SPECIFIC ISSUES

8 CFR § 204.6 (m) (i) (ii) (iv) and (v) can best be addressed in a comprehensive economic model and analysis of the impact of the investment vehicles that are encompassed by the business plan and strategy of the Regional Center.

There are several major commercial economic models in use that may be encountered as well as individualized economic models produced by individual economists for a specific Regional Center's business plan and strategy.

REGIONAL CENTER-SPECIFIC ISSUES

RIMS II

In the 1970's, the Bureau of Economic Analysis (BEA) developed a method for estimating regional I-O multipliers known as RIMS (Regional Industrial Multiplier System), which was based on the work of Garnick and Drake. /1/

In the 1980's, BEA completed an enhancement of RIMS, known as RIMS II (Regional Input-Output Modeling System), and published a handbook for RIMS II users. /2/

In 1992, BEA published a second edition of the handbook in which the multipliers were based on more recent data and improved methodology.

In 1997, BEA published a handbook that provides more detail on the use of the multipliers and the data sources and methods for estimating them.

REGIONAL CENTER-SPECIFIC ISSUES

RIMS II is based on an accounting framework called an I-O table. For each industry, an I-O table shows the industrial distribution of inputs purchased and outputs sold. A typical I-O table in RIMS II is derived mainly from two data sources: BEA's national I-O table, which shows the input and output structure of nearly 500 U.S. industries, and BEA's regional economic accounts, which are used to adjust the national I-O table to show a region's industrial structure and trading patterns. /3/

Using RIMS II for impact analysis has several advantages. RIMS II multipliers can be estimated for any region composed of one or more counties and for any industry, or group of industries, in the national I-O table. The accessibility of the main data sources for RIMS II keeps the cost of estimating regional multipliers relatively low. Empirical tests show that estimates based on relatively expensive surveys and RIMS II-based estimates are similar in magnitude. /4/

REGIONAL CENTER-SPECIFIC ISSUES

RIMS II Footnotes:

1. See Daniel H. Garnick, "Differential Regional Multiplier Models," Journal of Regional Science 10 (February 1970): 35-47; and Ronald L. Drake, "A Short-Cut to Estimates of Regional Input-Output Multipliers," International Regional Science Review 1 (Fall 1976): 1-17.

2. See U.S. Department of Commerce, Bureau of Economic Analysis, Regional Input-Output Modeling System (RIMS II): Estimation, Evaluation, and Application of a Disaggregated Regional Impact Model (Washington, DC: U.S. Government Printing Office, 1981). Available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; order no. PB-82-168-865; price $26.

3. See U.S. Department of Commerce, Bureau of Economic Analysis, The Detailed Input-Output Structure of the U.S. Economy, Volume II (Washington, DC: U.S. Government Printing Office, November 1994); and U.S. Department of Commerce, Bureau of Economic Analysis, State Personal Income, 1929-93 (Washington, DC: U.S. Government Printing Office, June 1995).

4. See U.S. Department of Commerce, Regional Input-Output Modeling System (RIMS II), chapter 5. Also see Sharon M. Brucker, Steven E. Hastings, and William R. Latham III, "The Variation of Estimated Impacts from Five Regional Input-Output Models," International Regional Science Review 13 (1990): 119-39.

REGIONAL CENTER-SPECIFIC ISSUES

IMPLAN

Input-output accounting describes commodity flows from producers to intermediate and final consumers. The total industry purchases of commodities, services, employment compensation, value added, and imports are equal to the value of the commodities produced.

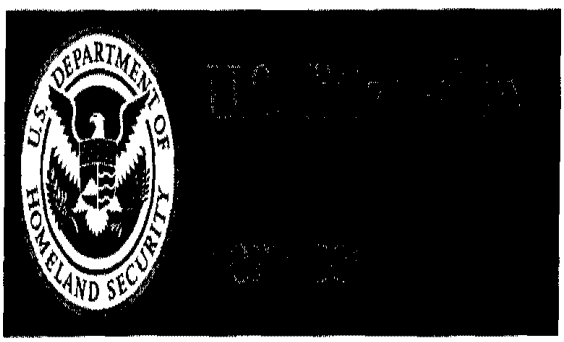
Purchases for final use (final demand) drive the model. Industries produce goods and services for final demand and purchase goods and services from other producers. These other producers, in turn, purchase goods and services. This buying of goods and services (indirect purchases) continues until leakages from the region (imports and value added) stop the cycle.

From: http://www.implan.com/library/documents/implan_io_system_description.pdf

REGIONAL CENTER-SPECIFIC ISSUES

These indirect and induced effects (the effects of household spending) can be mathematically derived. The derivation is called the Leontief inverse. The resulting sets of multipliers describe the change of output for each and every regional industry caused by a one dollar change in final demand for any given industry.

Creating regional input-output models require a tremendous amount of data. The costs of surveying industries within each region to derive a list of commodity purchases (production functions) are prohibitive. IMPLAN was developed as a cost-effective means to develop regional input-output models. The IMPLAN accounts closely follow the accounting conventions used in the "Input-Output Study of the U.S. Economy" by the Bureau of Economic Analysis (1980) and the rectangular format recommended by the United Nations.



REGIONAL CENTER-SPECIFIC ISSUES

The IMPLAN sytem was designed to serve three functions: 1) data retrieval, 2) data reduction and model development, and 3) impact analysis. Comprehensive and detailed data coverage of the entire U.S. by county, and the ability to incorporate user-supplied data at each stage of the model building process, provides a high degree of flexibility both in terms of geographic coverage and model formulation.

The IMPLAN database, created by MIG, Inc., consists of two major parts: 1) a national-level technology matrix and 2) estimates of sectorial activity for final demand, final payments, industry output and employment for each county in the U.S. along with state and national totals. New databases are developed annually by MIG, Inc.

REGIONAL CENTER-SPECIFIC ISSUES

IMPLAN easily allows the user to do the following:

- Develop his/her own multiplier tables;
- Develop a complete set of SAM (Social Accounting Matrix) accounts;
- Change any component of the system, production functions, trade flows, or database;
- Generate type I, II, or any true SAM multiplier internalizing household, government, and/or investment activities
- Create custom impact analysis by entering final demand changes;
- Obtain any report in the system to examine the model's assumptions and calculations.

There are two components to the IMPLAN system, the software and Databases. The databases provide all information to create regional IMPLAN models. The software performs the calculations and provides an interface for the user to make final demand changes.

REGIONAL CENTER-SPECIFIC ISSUES

REMI

What are the available configurations for the REMI model?

Policy Insight® is customized by region and by the number of industry sectors. REMI can design a single-region model that represents a single county, a group of counties (up to and including a state and additional counties), or even multiple states and additional counties. REMI can also design a multi-region model that can comprise counties or groups of counties. National models as well as sub-county models are also available.

How is REMI different from other I-O Models?

The primary advantage REMI Policy Insight® has over I-O models is that it is a dynamic model, which means that it allows for year-by-year analysis, while I-O models are static and do not have time series data. In addition, REMI makes use of Computable General Equilibrium (CGE) techniques, econometric estimations using time series panel data, and the New Economic Geography theory, which takes into account agglomeration effects due to the benefits of access to broader labor and commodity markets.

REGIONAL CENTER-SPECIFIC ISSUES

REMI Policy Insight is a structural economic forecasting and policy analysis model. It integrates input-output, computable general equilibrium, econometric, and economic geography methodologies. The model is dynamic, with forecasts and simulations generated on an annual basis and behavioral responses to wage,
price, and other economic factors.

The REMI model consists of thousands of simultaneous equations with a structure that is relatively straightforward. The exact number of equations used varies depending on the extent of industry, demographic, demand, and other detail in the specific model being used. The overall structure of the model can be summarized in five major blocks: (1) Output, (2) Labor and Capital Demand, (3) Population and Labor Supply, (4) Wages, Prices, and Costs, and (5) Market Shares. The blocks and their key interactions are shown in Figures 1 and 2.

REMI Model Linkages

(Excluding Economic Geography Linkages)

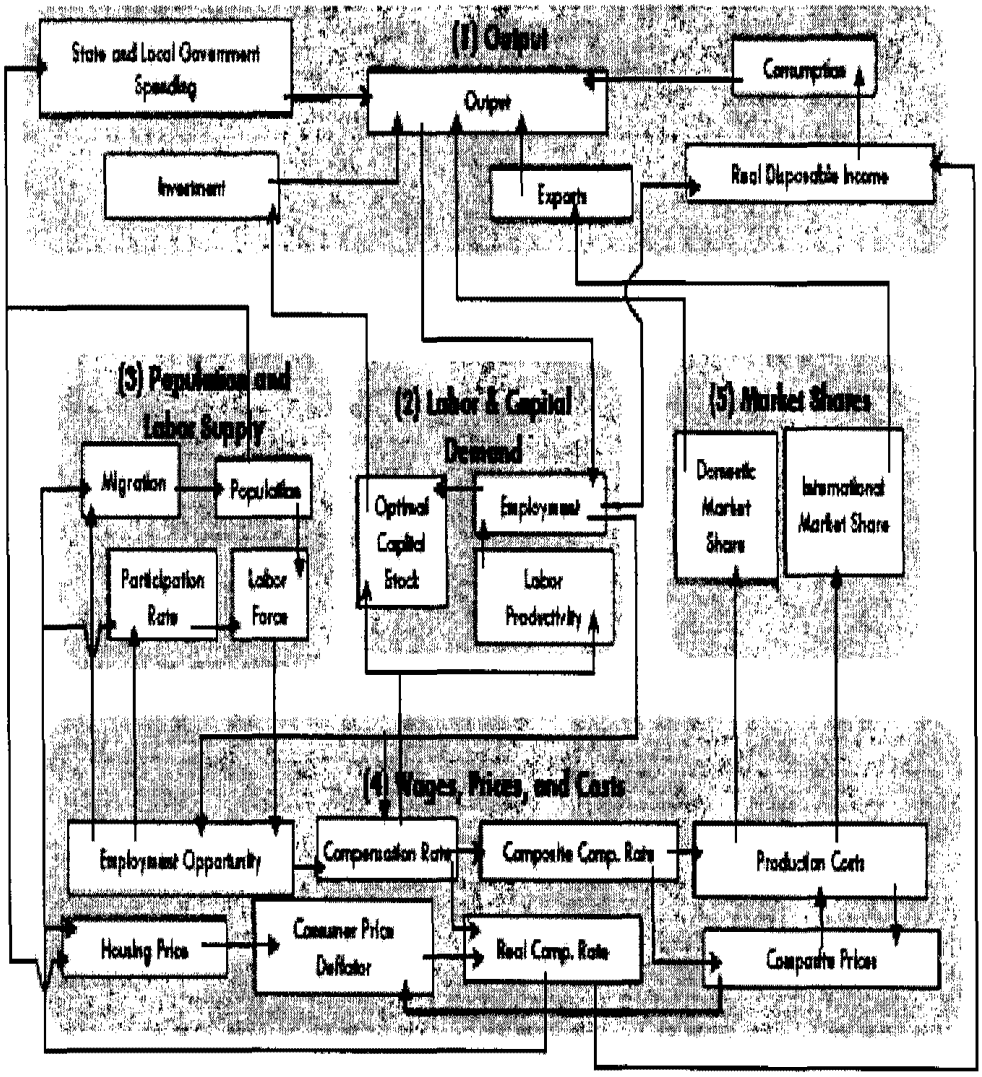


Figure 1: REMI Model Linkages

Economic Geography Linkages

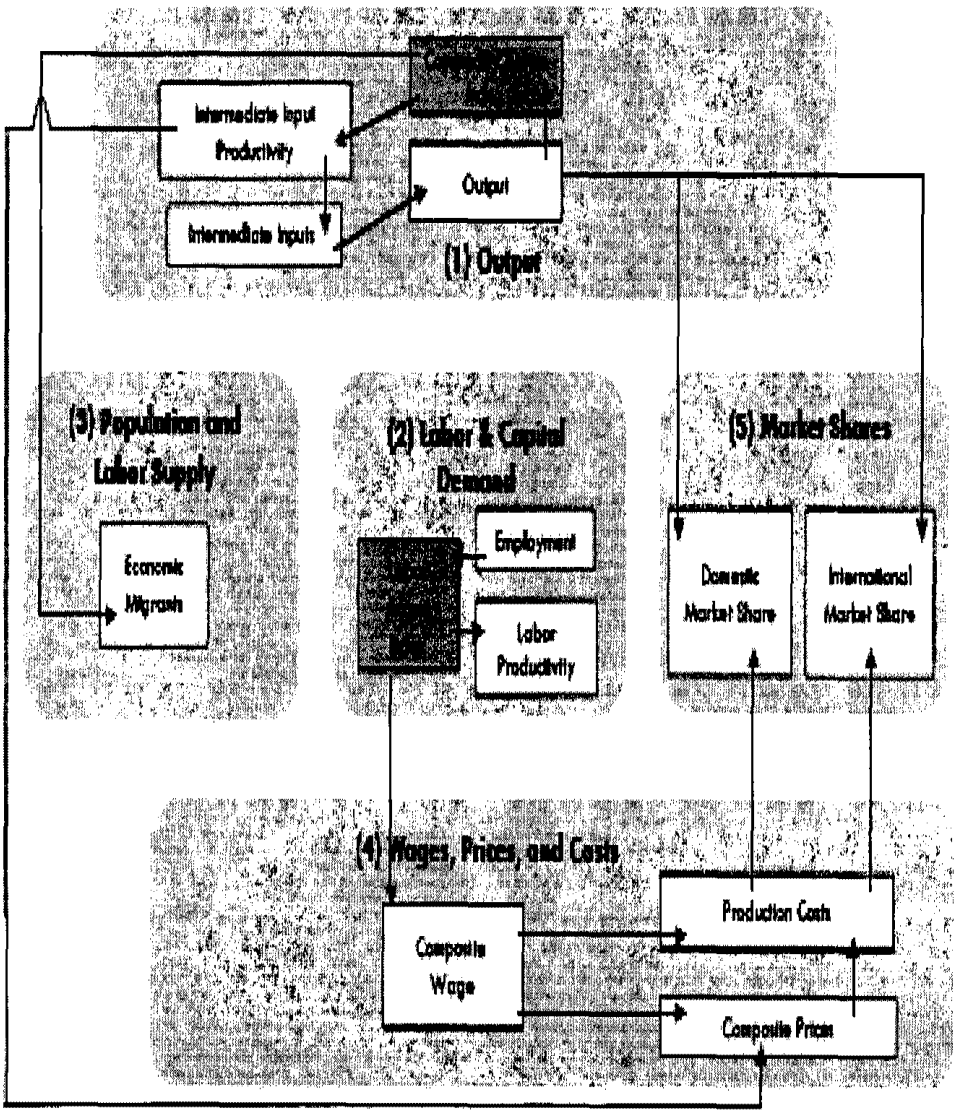
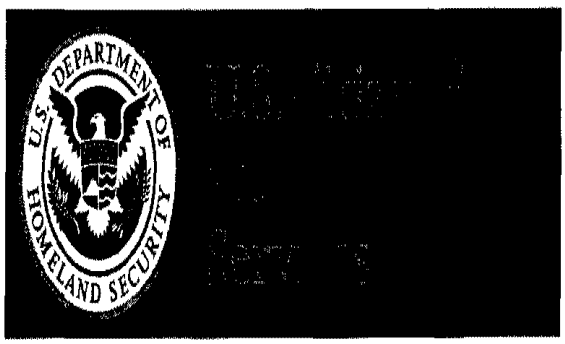


Figure 2: Economic Geography Linkages

REGIONAL CENTER-SPECIFIC ISSUES

REDYN

The REDYN model is a fundamental re-envisioning of economic theory applied to estimating multi-regional, dynamic effects. It reflects advances in New Economic Geography, especially gravity theory (regional attraction) and trade flow (regional imports/exports), based on a new distance impedance database from Oak Ridge National Laboratories that enables calculating trade flow by commodity by road, rail, water, air, and proxy transport. The breakthrough in design is the commodity production linkage between the trade flow process and an entity-based data structure for the economy. Entities include industries, workers, governments, investors, etc., and commodities are the goods they use and make.



REGIONAL CENTER-SPECIFIC ISSUES

Multipliers

Multipliers: represent a quantitative expression of the extent to which some initial, "exogenous" force or change is expected to generate additional effects through interdependencies associated with some assumed and/or empirically established, "endogenous" linkage system.

Multipliers are predicated upon a domino theory of economic change. They translate the consequences of change in one variable upon others, taking account of sometimes complicated and roundabout linkages. ***Multipliers are aptly called estimators of the 'ripple' effect".***

From: http://faculty.washington.edu/krumme/207/inputoutput.html

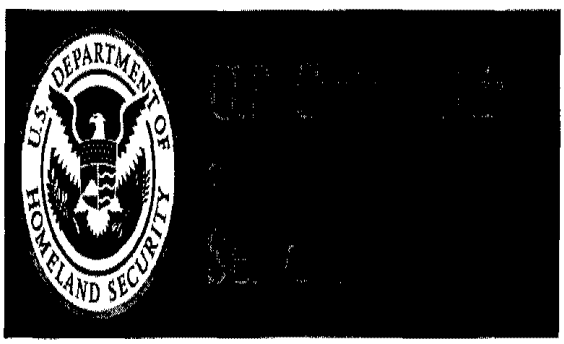
REGIONAL CENTER-SPECIFIC ISSUES

Multipliers

In more 'technical terms', they are numerical coefficients which relate a change in (a component of aggregate) demand (or employment) to a consequent change in total income (or total employment). Thus, a *"regional employment multiplier"*, for example, relates a change in a region's export (*"exogenous"*) employment to the resulting total employment change. In Input-Output analysis, there are many different multipliers. One multiplier is the ratio of the direct, indirect and induced effects to the direct (i.e. the initial) change itself.

Specific examples:
Job multiplier is the number of jobs per million dollars in direct sales.

Income multiplier is the ratio of income per dollar of direct sales. Income includes employee compensation, proprietor, and other property income.



REGIONAL CENTER-SPECIFIC ISSUES

Multipliers

Multiplier: is a numerical coefficient which relates the change of a component of aggregate demand (such as the export demand for a region's products) to a consequent change in income [or employment] (in this case: regional income or [employment]).

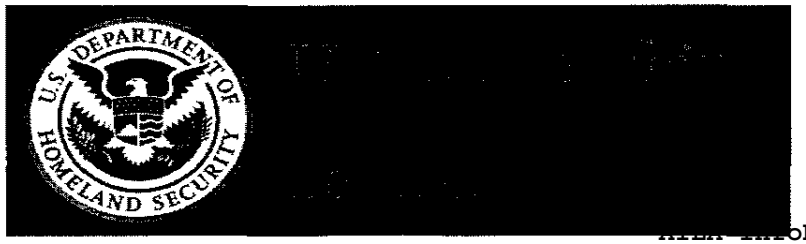
In the case of the regional employment multiplier we relate the change of employment in the region's export sectors to the consequent changes in employment in those ("non-basic") sectors which are facing a change in household demand as a (direct and indirect) result of changes in employment and income in the export sectors.

REGIONAL CENTER-SPECIFIC ISSUES

Multipliers

Leontief inverse matrix (& coefficients):

As applied to *regional* interindustry or inputput-output analysis, the values in this matrix (= Leontief coefficients) represent the total direct and indirect (and, possibly "induced") requirements of any industry j (typically in columns) supplied by other industries (i) within the region in order for industry j to be able to deliver $1 worth of output to final demand.

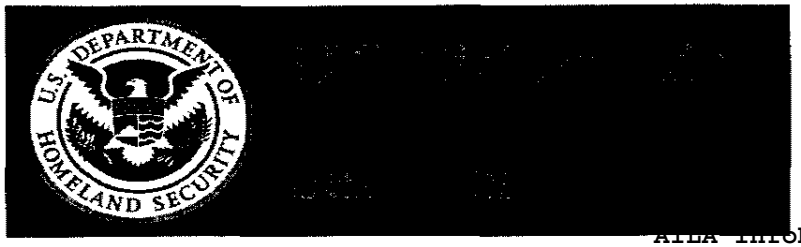


REGIONAL CENTER-SPECIFIC ISSUES

Multipliers

Technical coefficient:

In input-output analysis, identifies the percentage or portion of the total inputs of a sector required to be purchased from another sector irrespective of the geographic origin of this purchase. Technical (input) coefficients represent direct backward linkages of an industry to other industries and constitute the "recipe" for production of that industry. See also regional coefficient.



REGIONAL CENTER-SPECIFIC ISSUES

Multipliers

Regional coefficient (as different from the "technical" coefficient):

In regional input-output analysis, this coefficient identifies that part of the technical coefficient which is associated with purchases from firms located within the region. See "technical coefficient"

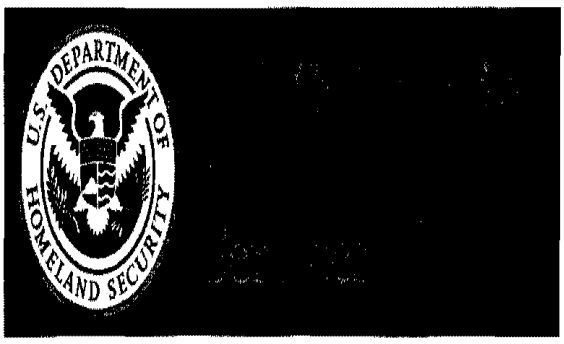
REGIONAL CENTER-SPECIFIC ISSUES

Multipliers

The simple economic base (employment) multiplier is presented in three different forms, respectively emphasizing different components and roles of the multiplier

Total Employment (T) = Basic Employment (B) + Non-basic Employment (N)

Multiplier Effect (ME) = Non-basic Employment generated (by Basic employment)
OR:
Basic employment multiplied by Non-basic employment per basic employee
OR:
Basic Employment x Multiplier minus Basic Employment
OR:
Basic Employment x (Multiplier - 1) ***[most common application you'll see]***



REGIONAL CENTER-SPECIFIC ISSUES

Standard of Evidence

8 CFR § 103.2 Applications, petitions, and other documents.
(b) (8) *Request for Evidence; Notice of Intent to Deny--(i) Evidence of eligibility or ineligibility.* If the evidence submitted with the application or petition establishes eligibility, USCIS will approve the application or petition, *except that in any case in which the applicable statute or regulation makes the approval of a petition or application a matter entrusted to USCIS discretion, USCIS will approve the petition or application only if the evidence of record establishes both eligibility and that the petitioner or applicant warrants a favorable exercise of discretion.* If the record evidence establishes ineligibility, the application or petition will be denied on that basis.

MATTER OF CHAWATHE

In Preservation of Residence for Naturalization Proceedings

(b)(6) [redacted]

Decided by the Director, Administrative Appeals Office,

January 11, 2006

3. In administrative immigration proceedings, the applicant must prove by a *preponderance of evidence* that he or she is eligible for the benefit sought. Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989), followed.

4. If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

REGIONAL CENTER-SPECIFIC ISSUES

Active Involvement

8 CFR § 204.6 (j)

(5) To show that the petitioner 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 petition must be accompanied by:

(i) 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;

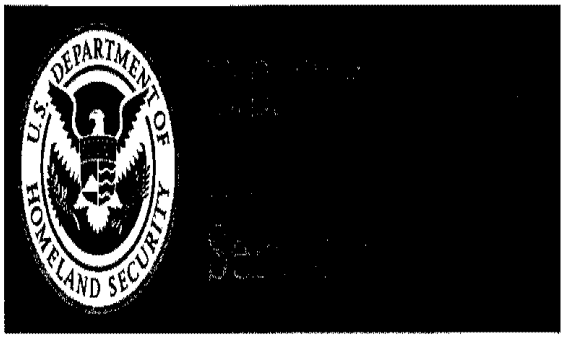
(ii) Evidence that the petitioner is a corporate officer or a member of the corporate board of directors; or

REGIONAL CENTER-SPECIFIC ISSUES

Active Involvement

8 CFR § 204.6

(j) (5) (iii) If the new enterprise is a partnership, either limited or general, evidence that the petitioner is engaged in either direct management or policy making activities. For purposes of this section, if the petitioner is a limited partner and the limited partnership agreement provides the petitioner with certain rights, powers, and duties normally granted to limited partners under the Uniform Limited Partnership Act, the petitioner will be considered sufficiently engaged in the management of the new commercial enterprise.



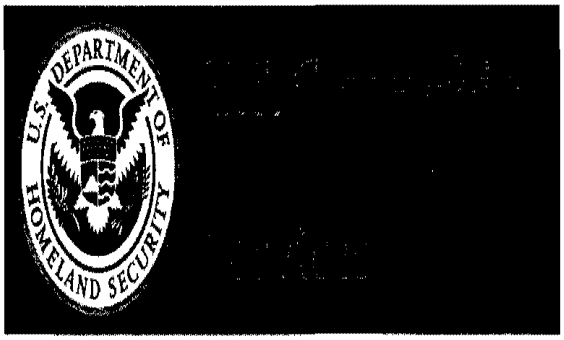
REGIONAL CENTER-SPECIFIC ISSUES

Job Creation

8 CFR § 204.6

(j) (6) If applicable, to show that the new commercial enterprise has created or will create employment in a targeted employment area, the petition must be accompanied by:

(i) In the case of a rural area, evidence that the new commercial enterprise is principally doing business within a civil jurisdiction not located within any standard metropolitan statistical area as designated by the Office of Management and Budget, or within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States; or



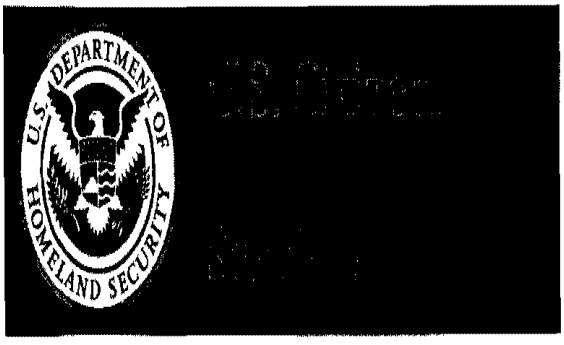
REGIONAL CENTER-SPECIFIC ISSUES

Job Creation

8 CFR § 204.6

(j) (6) (ii) In the case of a high unemployment area:

(A) Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business has experienced an average unemployment rate of 150 percent of the national average rate; or



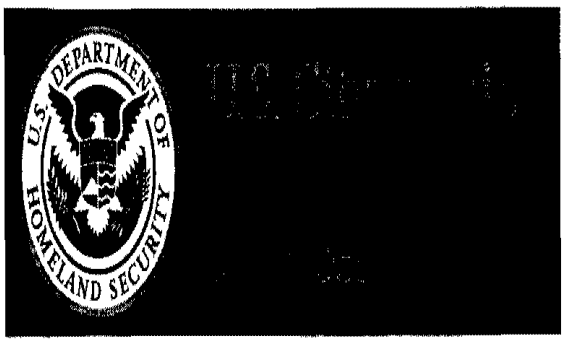
REGIONAL CENTER-SPECIFIC ISSUES

Job Creation

8 CFR § 204.6

(j) (6) (ii) In the case of a high unemployment area:

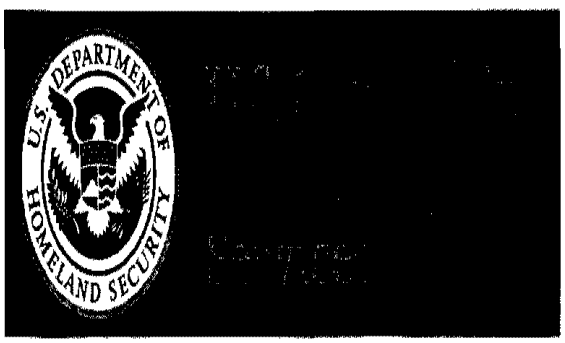
(B) A letter from an authorized body of the government of the state in which the new commercial enterprise is located which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. The letter must meet the requirements of 8 CFR 204.6(i).



REGIONAL CENTER-SPECIFIC ISSUES

8 CFR 204.6(i)

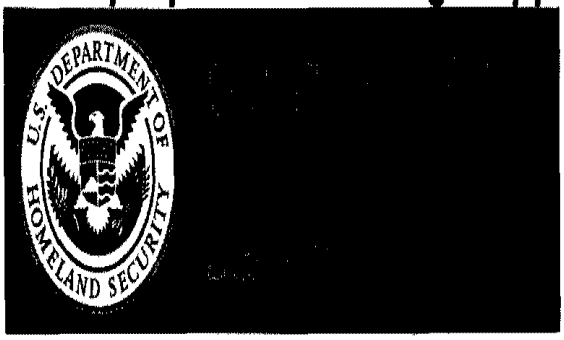
State designation of a high unemployment area. The state government of any state of the United States may designate a particular geographic or political subdivision located within a metropolitan statistical area or within a city or town having a population of 20,000 or more within such state as an area of high unemployment (at least 150 percent of the national average rate). Evidence of such designation, including a description of the boundaries of the geographic or political subdivision and the method or methods by which the unemployment statistics were obtained, may be provided to a prospective alien entrepreneur for submission with Form I–526. Before any such designation is made, an official of the state must notify the...[Chief, Office of Service Center Operations]...of the agency, board, or other appropriate governmental body of the state which shall be delegated the authority to certify that the geographic or political subdivision is a high unemployment area.



REGIONAL CENTER Q & A'S FOR I-526/829 TRAINING

Q. Can a single company (as opposed to a geographical region) be designated a "Regional Center"? If so, what happens if that company relocates its operation to a different County or State, does it automatically lose its certification as a "Regional Center" and need to reapply for certification?

Response: *The term "regional center" is not specifically defined in the statute and has been defined in regulations very flexibly as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." The statute provides that a regional center should have responsibility for a clearly defined and limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in the defined economic zones. Entity does not apply to a particular land area or geography, but to the individual "entity" which has proposed and sought approval and designation to be a regional center.*



Note: there is no requirement that the responsible administrative party for a regional center entity be physically located within the same locale as the geographic area encompassed by the regional center. However, the industry and geographic focus of the regional center's approval and designation must remain fully consistent with what is contained within its approval in terms of economic target industry and geographic area of focus.

Q. Can a geographical region (as opposed to a single company) be designated a "Regional Center"?

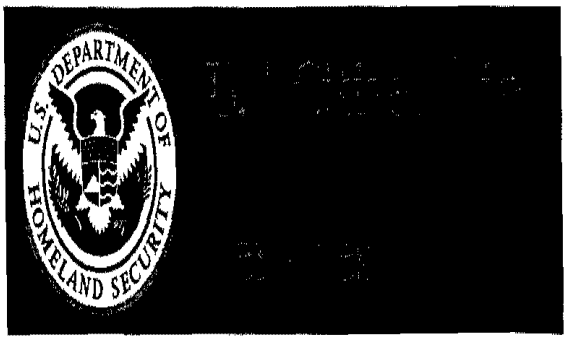
Response: No. However, there is no restriction within either the statute or regulations as to how many entities may be approved and designated to be a regional center regardless of whether their geographic area overlaps or is even identical.

Q. If the geographic area is covered by a certified Regional Center and if we have an identical business purpose (e.g., a Senior Retirement Facility), and if we are located within the same Target Employment Area, would we still need to submit an economist report with each individual alien investor petition?

Response: *In any individual investor case which is un-affiliated or not formally connected to a regional center entity, there must be clear probative evidence of planned creation of not fewer than ten (10) permanent full time (35 hours or more per week) identifiable direct jobs for qualified employees (U.S. citizens or Permanent Residents of the U.S.). If the activity or enterprise and the investment is not made through or is not directly and legally affiliated/associated with an approved regional center for investment into an approved economic activity, the project may not benefit from seeking credit for creating jobs "indirectly." An approved economic activity absent affiliation or association with or through an approved regional center entity would not qualify to be credited with any "indirect" job creation within the Pilot Program.*

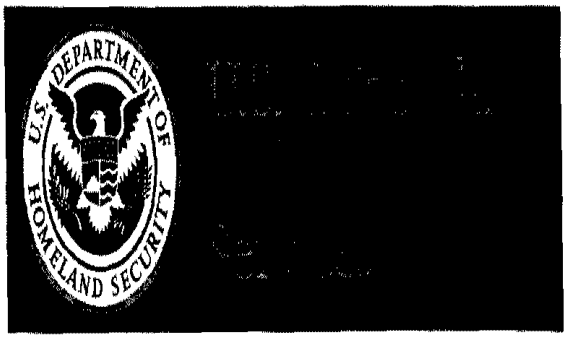
To be eligible to be credited with "indirect" job creation, a formal proposal would need to be submitted to USCIS by which to separately apply for and obtain approval and designation as a new regional center entity from USCIS. A critical dimension related to regional center approval and designation by USCIS is that the approved regional center entity be aware of its inherent responsibilities with respect to the administration, oversight and vigilance to ensure that the purpose of the Pilot Program is sustained through evaluation and vetting of both proposed investment activities and the alien investors.

An integral aspect of the Pilot Program involves administration, operation and oversight through a regional center entity and the requirement for an approved regional center entity to apprise USCIS on its investment activities and alien investors in order to show that its activities, investments, recruitment efforts, investors, operations, etc., are continuing to meet the requirements under the statute which govern the Immigrant Investor Pilot Program. Such a responsibility is neither viable nor practical with respect to investments and investors not affiliated with or operating through a USCIS approved and designated regional center within the Pilot Program.



Q. If we have an identical business purpose but do not want to invest "through" the approved regional center, would an economist report be needed for our investors' EB-5 applications? If it would, can we utilize the same economist report for each EB-5 application in our program?

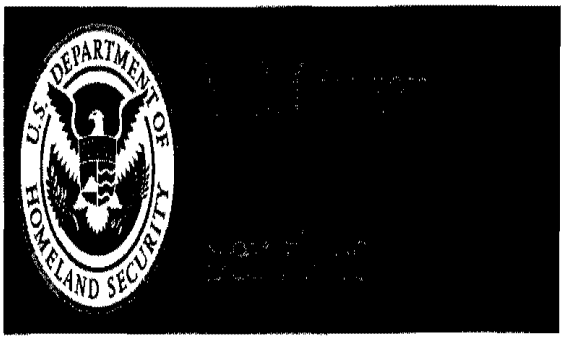
Response: Filing individual investor petitions which are neither affiliated with or made through a USCIS approved regional center, even if they are individually supported by individual economic analysis, forecasting tools, feasibility studies and indirect job multipliers in support of an individual investor petition that is neither part of or within the purview of a designated regional center entity would cause such a petition to be ineligigible for claiming or being credited with any job creation "indirectly." Rather, such an EB-5 alien investor would be required to demonstrate not less than ten (10) identifiable "direct" new jobs within an identifiable job creating enterprise for qualified employees in the case of any such un-affiliated EB-5 alien petition.



Pursuant to the regulations at 8 CFR 204.6(m)(4) and (5) jurisdiction for evaluating and rendering a determination regarding economically or statistically valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for goods or services to be exported (if applicable), and/or indirect job creation multipliers as required by 8 CFR 204.6(m)(3) resides at a USCIS identified program level with respect to review and adjudication of applications seeking USCIS approval and designation to be a regional center within the Immigrant Investor Pilot Program. Thus, any individual immigrant investor who is not investing through the entity which has been designated to operate as an authorized regional center by USCIS, then such an individual EB-5 alien investor may not claim or be accorded the option of claiming "indirect" job creation.

Q. Which steps can we skip in the Regional Center application process, if any, since we are applying for Regional Center certification as a senior retirement facility, which is a business purpose already approved for Regional Center designation? For instance, would we still need to submit an economist report with our Regional Center application? Also, would the EB-5 foreign investor in our program still need to obtain an economist report in order to establish he met the employment requirement?

Response: *Any entity applying for or seeking USCIS approval and designation to operate as a regional center within the Immigrant Investor Pilot Program, must submit a full and complete proposal and application. There are no short cuts, abridgements, or steps which may be "skipped." All the "how to apply" instructions need to be fully and completely addressed and followed in applying for approval and designation from USCIS to be a regional center.*



Q. Do all 10 direct or indirect full time positions need to be established immediately or can they be created at any time over the 2-year Conditional Resident period?

Response: Absent investing through or in affiliation with an approved regional center, as noted above only individually identifiable "direct" jobs for qualified employees may be counted. At the I-526 stage, as explicitly required in the regulations at 8 CFR 204.6(j) (4) (B) a comprehensive business plan and supporting evidence must show that 10 full time permanent direct jobs for qualified employees will be created within the next two-years, meaning that all 10 direct jobs per each EB-5 alien investor must be shown and identified by the time the I-829 petition for a "non-affiliated" investor is filed with USCIS to remove their conditions.

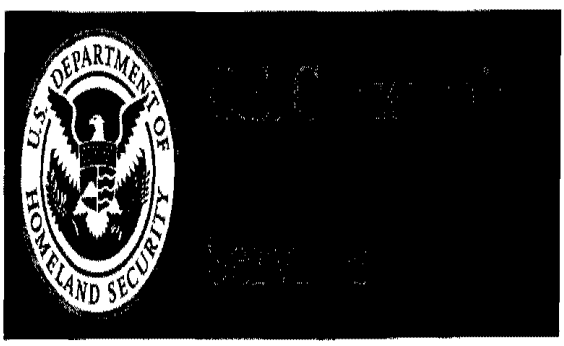
Questions?

If you need help, send your questions to:

USCIS Immigrant Investor Program

in outlook e-mail or

USCIS.ImmigrantInvestorProgram@dhs.gov



[redacted]

8 CFR § 216.6

Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

(a) Filing the petition--(1) General procedures. A petition to remove the conditional basis of the permanent resident status of an alien accorded conditional permanent residence pursuant to section 203(b)(5) of the Act must be filed by the alien entrepreneur on Form I-829, Petition by Entrepreneur to Remove Conditions.....Upon receipt of a properly filed Form I-829, the alien's conditional permanent resident status shall be extended automatically , if necessary, until such time as the director has adjudicated the petition.

*It typically is automatically extended for 12 months.

8 CFR § 216.6

Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

(a) Filing the petition—

(2) Jurisdiction. Form I-829 must be filed with the regional service center having jurisdiction over the location of the alien entrepreneur's commercial enterprise in the United States.*

*Effective 10/1/08 jurisdiction for all I-829s are centralized to the California Service Center.

8 CFR § 216.6

Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

(a) Filing the petition—

(3) Physical presence at time of filing. A petition may be filed regardless of whether the alien is physically present in the United States. However, if the alien is outside the United States at the time of filing, he or she must return to the United States, with his or her spouse and children, if necessary, to comply with the interview requirements contained in the Act.*

The interview is usually waived in I-829 cases but the rare possibility exists that a case may be relocated for an interview based on a fraud or national security or money laundering suspicion. [Redact this paragraph

8 CFR § 216.6

Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

(a) Filing the petition—

(4) Documentation. The petition for removal of conditions must be accompanied by the following evidence: (i) Evidence that a commercial enterprise was established by the alien . Such evidence may include, but is not limited to, Federal income tax returns;....*

*Public Law 107-273, amends the INA so that an EB-5 alien is no longer required to "establish" a commercial enterprise. The law, however, did not change the requirement that the commercial enterprise be "new", as defined in 8 CFR 204.6(e).

8 CFR § 216.6

Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

(a) Filing the petition—

(4) Documentation. The petition for removal of conditions must be accompanied by the following evidence: (iii) Evidence that the alien sustained the actions described in paragraph (a)(4)(i) and (a)(4)(ii) of this section throughout the period of the alien's residence in the United States.....*

*That the alien investor "sustained" his/her investment throughout the two years of CR status.

8 CFR § 216.6

Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

(a) Filing the petition—

(4) Documentation. The petition for removal of conditions must be accompanied by the following evidence: (iii) ..... The alien will be considered to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met* the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence.....

There is no quantitative standard for "substantially met" although it will be the rarest of exceptions that an alien would not have invested the full requisite capital by the point of filing form I-829.

8 CFR § 216.6

Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

(a) Filing the petition—(4) Documentation. The petition for removal of conditions must be accompanied by the following evidence:.... (iv) Evidence that the alien created or can be expected to create within a reasonable time ten full-time jobs for qualifying employees....*

*We expect in the vast majority of cases that all of the requisite jobs have been created by the time the I-829 is adjudicated. However, the regulations here do contemplate certain circumstances in which the requisite jobs can be created within a "*reasonable period of time.*" Nonetheless, a favorable adjudication of the I-829 without the requisite jobs having been actually created would be the rare exception.

8 CFR § 216.6

Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

(a) Filing the petition—(4) Documentation. The petition for removal of conditions must be accompanied by the following evidence:.... (iv) Evidence that the alien created or can be expected to create <u>within a reasonable time</u> ten full-time jobs for qualifying employees....

***There is NO "bright line" rule to define what constitutes a "*reasonable period of time*" as such period depends on the factors of each individual case. You may consider all appropriate evidence that would (a) clearly justify not having completed the job creation by the end of the two years of conditional residence (e.g., the nature of the investment, the industry involved, natural disasters such as Katrina, etc.) & (b) show that the full number of requisite new jobs will be created within a clear, defined and credible period of time.**

8 CFR § 216.6

Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

(b) Petition review--(1) Authority to waive interview.....If satisfied that the requirements set forth in paragraph (c)(1) of this section have been met, the service center director may waive the interview and approve the petition. If not so satisfied, then the service center director shall forward the petition to the district director having jurisdiction...*

***This authority has been delegated to service center directors by AFM update 22.5 to waive the interview and deny the Form I-829 petition where the service center director determines that the petition is deniable because on its face, and based on evidence supporting the petition, the eligibility requirements for approving the I-829 petition have not been met.**

8 CFR § 216.6

Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

(c) Adjudication of petition. (1) The decision on the petition shall be made within 90 days of the date of filing or within 90 days of the interview, whichever is later. In adjudicating the petition, the director shall determine whether:

(i) A commercial enterprise was established by the alien; *

*This "establishment" requirement was eliminated in the 2002 EB-5 Amendment to the INA.

8 CFR § 216.6

Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

*(c) Adjudication of petition. (1) The decision on the petition shall be made within 90 days of the date of filing or within 90 days of the interview, whichever is later. In adjudicating the petition, the director shall determine whether: (iv) The alien created or can be expected to create within a reasonable period of time ten full-time jobs to qualifying employees. *.....*

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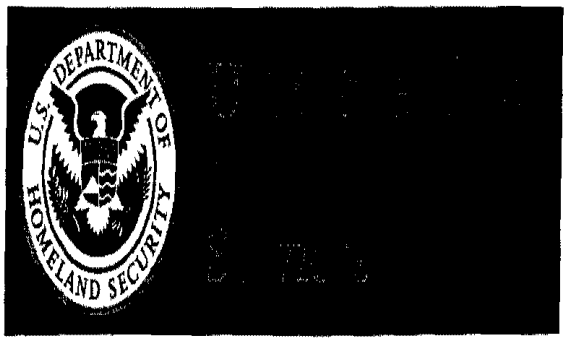
*"Qualifying Employee" refers only to direct jobs which can be individually identified, NOT to indirect jobs which are never individually or specifically identifiable. Indirect jobs are presumed to have occurred in conjunction with the release of the investor's capital into the enterprise.



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8 CFR § 216.6

Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

*(c) Adjudication of petition. (1)..... . In the case of a ``troubled business" as defined in 8 CFR 204.6(j)(4)(ii), the alien maintained the number of existing employees *at no less than the pre-investment level for the previous two years.*

*The full number of existing "direct" full time jobs in a troubled business (not less than 10) for "qualified employees" must be sustained & preserved.

Questions?

If you need help, send your questions to:

USCIS Immigrant Investor Program

in outlook e-mail or

USCIS.ImmigrantInvestorProgram@dhs.gov

U.S. Department of Homeland Security

REGIONAL CENTERS & IMMIGRANT INVESTOR PILOT PROGRAM

For Use in EB-5 Training

Regional Center Defined (Pl. 102-395, Dec. 3, 1993, 107 Stat. 1947)

- The term "regional center" is defined as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment."

- The statute provides that a regional center should have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in the defined economic zones.

- The establishment of a regional center may be based on general predictions, contained in the proposal concerning the kinds of commercial enterprises that would receive capital from aliens, the jobs that would be created directly or indirectly, and the other positive economic effects that would result from such capital investments.

REGIONAL CENTER REQUIRED TO [illegible]

Focus on a geographic area

Growth via Export Sales, if applicable

Promote improved regional productivity

Create 10 direct or indirect jobs

Increase Domestic Capital Investment

Promote, market, publicize to investors

Positive impact on household earnings

Generate greater demand for business services, maintenance, construction

Focus on a geographic region [8 CFR 204.6(m)(3)(i)]

- It is helpful that a proposal addresses the geographic region by:
  - Clear narrative description
  - How it's a contiguous geographic area/territory
  - Visually as reflected on a map with clearly detailed geographic territorial boundary lines (color coded)
  - That clearly delineates any TEA's and/or RA's which are within the Regional Center's boundaries from areas that are not.

Changes in the law relating to Regional Center pilot program

- 2000 Changes in law
  - Export Sales no longer mandatory
- 2002 Changes in law
  - General Business Plan to be contained in proposal
  - Regional Center must have jurisdiction over limited geographic area
  - Concentrate pooled investments in defined economic zones
- 2003 Changes in law
  - Extended Pilot Program to 2008
  - Authorized USCIS to give priority to I-526 petitions filed under the pilot program.

TEA's, RA's and Other

- **TEA:** Geographic area with population greater than 20,000 with unemployment rate 150% of the national unemployment rate.
- **RA:** Geographic area **outside** of a MSA or the outer boundary of a city with a population more than 20,000.
- Investment threshold for a TEA or RA is $500,000 per alien investor.
- Outside a TEA or RA, investment threshold is $1 million per alien investor.
- If RC includes TEAs or RAs, it should clearly delineate them from Non-TEAs/RAs.

Key Legislative Issues

1. Job creation methodology/model should be supported by sound and accepted economic forecasting tools for the specific geographical focus of the Regional Center. Also should be able to predict impact on regional economy.

2. Examples of tools or models that have been accepted:

   Impact Analysis for Planning (IMPLAN)

   RIMS II

   Models specially created by Economists that are economically sound.

   Other generally accepted economic models..

Smart Start: Reject Bad Employment Creation

- Provision for:
  - Requisite Investment capital value threshold ($500K vs. $1 million)
  - Active investment provisions
  - "New" job creating business
  - Rescuing a "troubled" business
  - Reorganizing/restructuring an existing business
  - Lawful Source of Funds
  - Investment capital at risk
  - Active involvement of Alien Investor
  - Creation of 10 full time jobs (directly or indirectly)
  - Satisfies Izummi (22 I&N Dec. 169, 1998)

Helpful documentation in a Regional Center Proposal

- A sample agreement or investment offering memo between Regional Center & Alien Investor which lays out key elements of investment in terms of risk, direct investment, describing nature of alien investor's "active" involvement, with NO redemption, buy back, or loan arrangement between alien & enterprise.
- A proposed escrow agreement that describes solely the investment capital at risk (e.g., does NOT include funds for attorney or other service fees).
- Clear promotional marketing plans and strategies.
- Business Plan should describe how Regional Center will use investment capital for financial gain & job creation.
- Description of the types or kinds of job creating businesses that will be invested in, and how the Regional Center will focus on specific industries.

Help Documentation (Continued)

Describe the organizational structure of the commercial enterprise (e.g., LLC, LLP, Inc., etc.).

Describe amount of capital the alien investor will be required to invest.

Describe the timing of the investment.

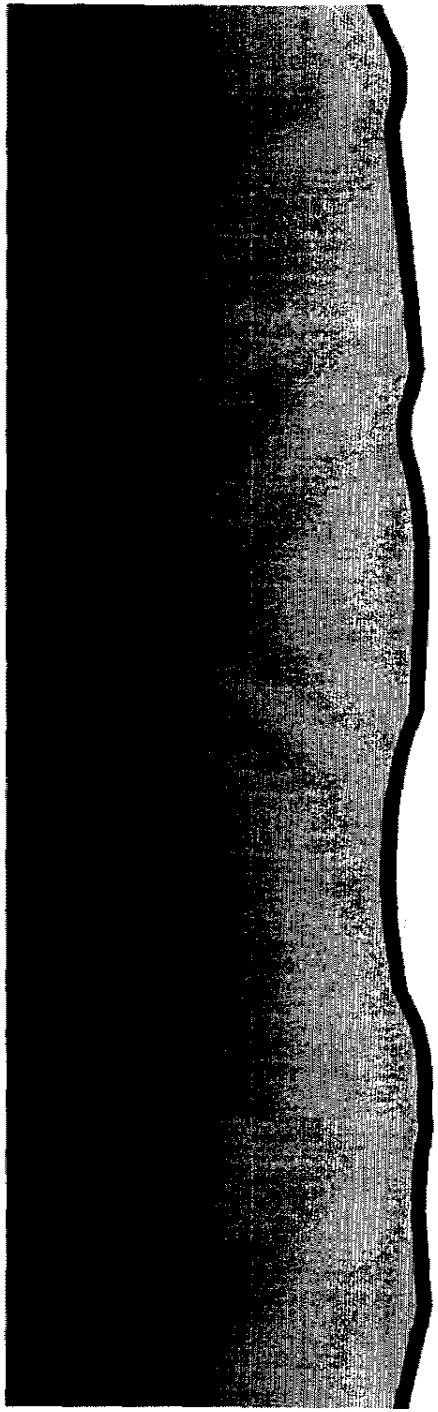
Describe alien investor's ownership interest and expected percentage of profit.

Describe the roles and responsibilities of all core agencies or organizations in a proposed Regional Center's operation. Also provide executed agreements or MOUs that clearly define, describe or specify the relationship, responsibilities, and obligations.

Financial Statements

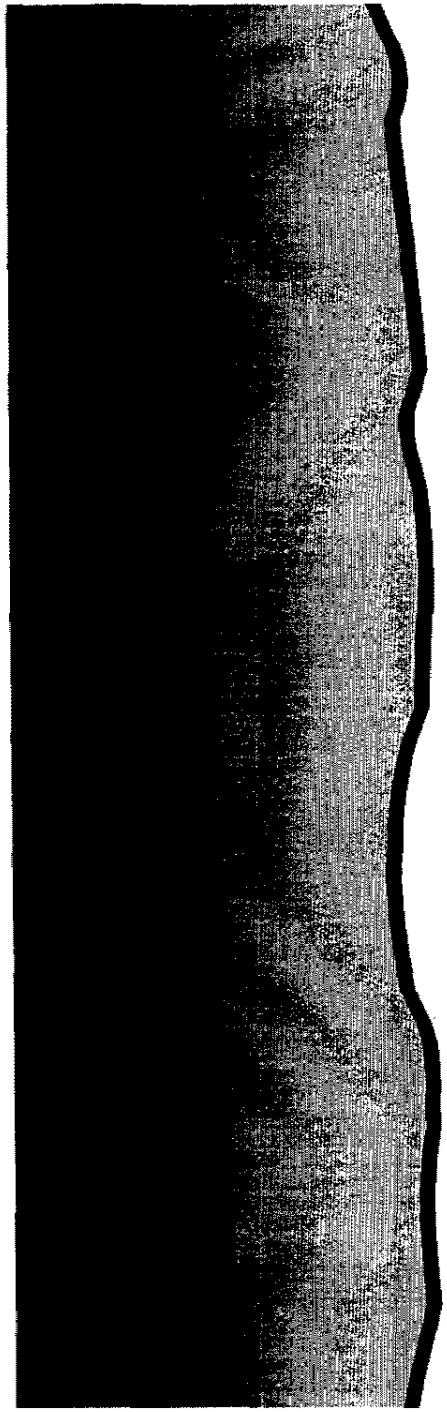
Basic Financial Documents

- *Income Statement*
- *Balance Sheet*
- *Statement of Cash Flows*



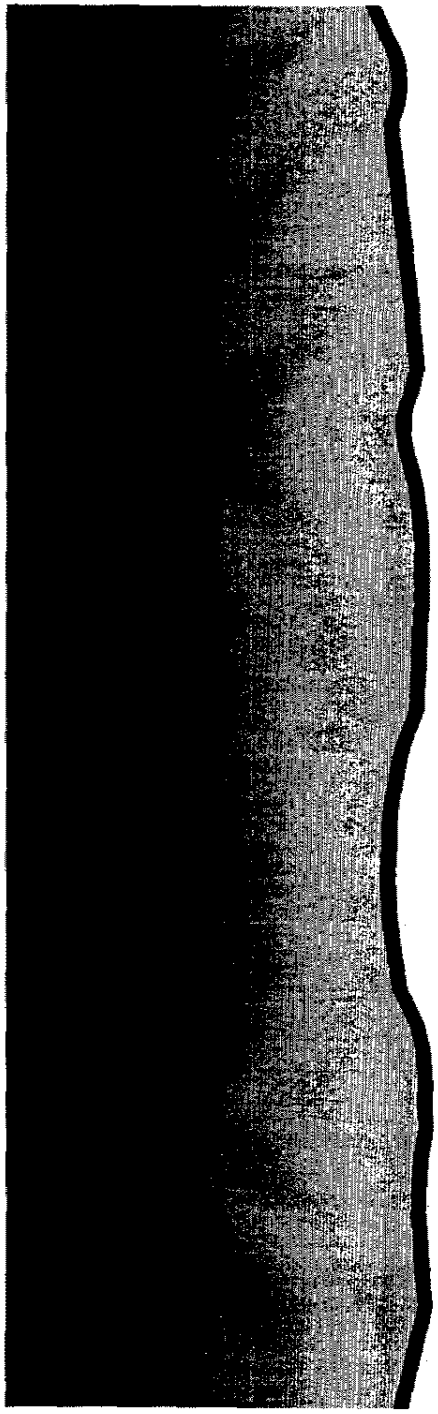
Income Statement

- *Shows whether a business had net income (profit) or nest loss during a specific period*
- *Revenues > Expenses = Net Income*
- *Expenses > Revenues = Net Loss*



Balance Sheet

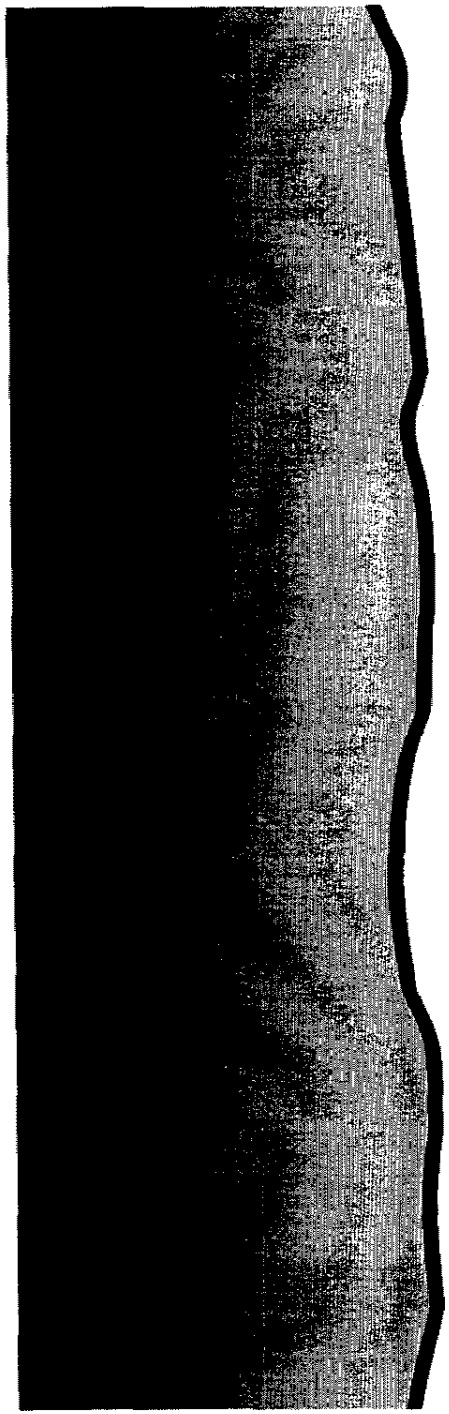
- *Shows financial position or status on a specific date*
- *Shows assets vs.. liabilities and owner(s) equity*
- *Most balance sheets are classified: they show current (**receivable or payable within 1 year**) and long-term assets and liabilities.*



Typical Evidence

There are two Categories of Financial Statements Typically Provided In EB-5 Petitions:

- *Tax Returns (Discussed in a Different Section)*
- *Audited or Reviewed Financial statements*



Statement of Cash Flows

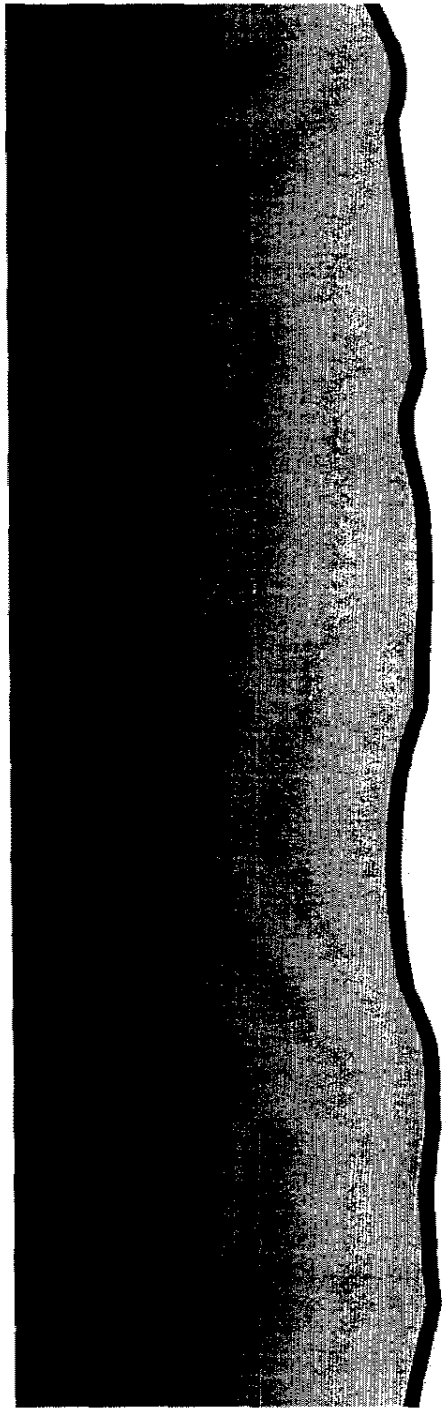
- *Accompanies income statement and balance sheets for given period*
- *Identifies changes in cash and cash equivalents during a stated period*
- *Helpful as additional evidence to indicate availability of sufficient funds & viability of business entity.*

Financial Statements

- *Internally generated*
- *Compiled*
- *Reviewed*
- *Audited*

Internally Generated Statements

- *Created by management*
- *Reflect management's claims pertaining to information presented*
- *No determination of validity by outside individual*
- *Effectively hearsay; at best, the equivalent of an affidavit or self-attestation*



Compiled Financial Statements

- *Prepared by "outside" accountant, but no requirement of independence*
- *Based on petitioner's accounting records or representations*
- *CPA is only required to request revisions if statement appears blatantly irregular*

Reviewed Financial Statements

- *CPA required to obtain an understanding of petitioner's accounting system, apply standard analysis techniques and question responsible personnel within company*
- *CPA may prepare or may review internally generated statements*

Audits (1)

- *Examination of financial data, accounting records, supporting evidence within and outside the company*
- *Evidence that sales occurred, goods were shipped, all expenses reported, etc.*
- *Accountant's professional reputation, business, etc. support data presented*

Audits (2)

- *Required by SEC for most publicly traded corporations*
- *Required by many banks for commercial loans*
- *Not required by IRS*
- *Seldom used by small business if not required*

In re SOFFICI, Petitioner

In Visa Petition Proceedings

[redacted] (b)(6)

Designated as a precedent by the Commissioner, June 30, 1998.
(Decided by the Associate Commissioner, Examinations, June 25, 1998.)

(1) A petitioner under § 203(b)(5) of the Immigration and Nationality Act cannot establish the requisite investment of capital if he lends the money to his new commercial enterprise.

(2) Loans obtained by a corporation, secured by assets of the corporation, do not constitute capital invested by a petitioner. Not only is such a loan prohibited by 8 C.F.R, § 204.6(e), but the petitioner and the corporation are not the same legal entity.

(3) A petitioner's personal guarantee on a business's debt does not transform the business's debt into the petitioner's personal debt.

(4) A petitioner must present clear documentary evidence of the source of the funds that he invests. He must show that the funds are his own and that they were obtained through lawful means.

(5) A petitioner who acquires a pre-existing business must show that the investment has created, or at least has a reasonable prospect of creating, 10 full-time positions, in addition to those existing before acquisition. The petitioner must, therefore, present evidence concerning the pre-acquisition level of employment. Simply maintaining the pre-acquisition level of employment is not sufficient, unless the petitioner shows that the pre-existing business qualifies as a "troubled business."

ON BEHALF OF PETITIONER: LARRY J. BEHA
888 SE 3RD AVENUE
SUITE 400
FORT LAUDERDALE FL 33316

The preference visa petition was approved by the Director, Texas Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be reversed.

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5). The director determined that the petitioner had adequately

established that he was actively in the process of investing the requisite amount of capital. The director further found that the investment would result in full-time positions for not fewer than 10 qualifying employees.

In response, counsel urges the Administrative Appeals Office to affirm the director's decision. He asserts that the petitioner's investment exceeds one million dollars and points out that the hotel is commercially active. He states that the petitioner's investment has already created at least 10 full-time jobs.

Section 203(b)(5)(A) of the Act provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

> (i) which the alien has established,
>
> (ii) 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
>
> (iii) 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).

MINIMUM INVESTMENT AMOUNT.

The petitioner indicates that the petition is based on an investment in an existing business located in a targeted employment area, for which the required amount of capital invested has been adjusted downward.

8 C.F.R. § 204.6(e) states, in pertinent part, that:

> *Targeted employment area* means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

The petitioner's company, Ames Management, Inc., does business as a Howard Johnson Hotel located at 950 South Federal Highway in Stuart, Florida. The City of Stuart is in Martin County. The petitioner has submitted a March 1996 letter from the Florida Department of Labor and Employment Security indicating that Martin County qualified as a rural area in 1995. In addition, the Ft. Pierce metropolitan statistical area, which encompassed Martin County, experienced a sufficiently high unemployment rate to qualify as a targeted employment area in 1995.

A petitioner has the burden to establish that his enterprise does business in an area that is considered "targeted" as of the date he files his petition.

The fact that a business may be located in an area that was once rural, for example, does not mean that that area is still rural. The letter from the Florida Department of Labor and Employment Security contains the following statement: "This listing will only remain in effect until 1996 annual averages are available in early 1997." The petitioner here filed his Form I-526 in January 1998, and his data are at least a year, if not two years, out of date.

The Service has nevertheless independently obtained current employment information from the Florida Department of Labor and Employment Security. While Martin County is no longer a rural area, the "Ft. Pierce-Port St. Lucie" metropolitan statistical area does constitute an area of high unemployment; all of Martin County is contained in this new metropolitan statistical area. Therefore, the amount of capital necessary to make a qualifying investment in this matter is $500,000.

THE PETITIONER HAS NOT MADE, AND IS NOT IN THE PROCESS OF MAKING, A QUALIFYING INVESTMENT OF CAPITAL.

8 C.F.R. § 204.6(e) states, in pertinent part, that:

> *Capital* means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness.
>
> *Commercial enterprise* means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned. This definition 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. This definition shall not include a non-commercial activity such as owning and operating a personal residence.
>
> *Invest* means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

8 C.F.R. § 204.6(j) states, in pertinent part, that:

> (2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner 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 suf-

fice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:

(i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;

(ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices; sales receipts; and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

(iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

(iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred), Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

(3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:

(i) Foreign business registration records;

(ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

(iii) Evidence identifying any other source(s) of capital; or

(iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

Purchase of the hotel.

Ames Management, Inc. filed its articles of incorporation with the State

of Florida on June 27, 1997. All 1000 authorized shares were issued to the petitioner in July 1997. On October 31, 1997, Ames Management purchased a Howard Johnson's Motor Lodge for the sale price of $2.4 million, paid as follows: $25,000 in earnest money, consisting of a $10,000 initial deposit and a subsequent $15,000 deposit; $705,298.79 brought to settlement; and $1.7 million borrowed from 1st United Bank.

In a document entitled Sources of Investment Funds, the petitioner stated that the money used to purchase the hotel came from two sources. Approximately $450,000 were transferred to Barnett Bank from Argentina over the period 1994 to 1997; these funds "originated from personal savings and a sale of a house." An additional $500,000 were transferred from Argentina in December of 1996; these funds originated from the sale of "our business." The petitioner explained that, for both sources, "[t]hese monies were loaned to me by my father and I loaned them back to my company Ames Management, Inc. It has not been stipulated when I should return the funds."[1]

The balance sheet for the petitioner's hotel, dated November 30, 1997, confirms that the business's liabilities include long-term loans, totaling $922,136.09, payable to the shareholder (the petitioner), *See also* the Continuing and Unconditional Subordination of Debt discussed below. The accompanying "Transactions by Account" breaks down the amount, date, and destination of each loan. It is clear from this document that the $25,000 in earnest money and the $705,298.79 brought to the settlement table are mere loans from the petitioner to Ames Management. As specified in the definition of "invest" set forth in 8 C.F.R. § 204.6(e), debt arrangements between a petitioner and his business do not constitute qualifying contributions of capital. Therefore, the $730,298.79 paid toward the purchase of the hotel cannot be considered to be an "investment" by the petitioner.

Ames Management financed the balance of the purchase price, or $1.7 million, through 1st United Bank. According to the Mortgage and Security Agreement, the loan is secured by the hotel and all of its contents, including inventory, accounts, leases, the franchise agreement, furniture, patio umbrellas, landscaping, etc. First, it should be noted that a loan obtained by a corporation is not the same as a loan obtained by an individual, and it cannot be said that this loan through 1st United Bank is an investment of the *petitioner's* personal capital. Second, even if it were assumed, arguendo, that the petitioner and Ames Management were the same legal entity for purposes of this proceeding, indebtedness that is secured by assets of the enterprise is specifically precluded from the definition of "capital." *See* 8 C.F.R. § 204.6(e).

[1]The petitioner has not disclosed the terms of the loan from his father, and it is not known if, for example, it is secured by assets of Ames Management.

Counsel points out that the petitioner has personally guaranteed the payment of the loan. In a Continuing and Unconditional Subordination of Debt dated October 31, 1997, Ames Management and the petitioner agreed that all debts owed by Ames to 1st United would receive priority; all obligations owed by Ames to the petitioner would be subordinated to those owed to 1st United. In case of default by Ames with regard to its loan from 1st United, the petitioner would not seek or accept payment from Ames with regard to Ames's debts to the petitioner. In an Unconditional and Irrevocable Guaranty of Payment, also dated October 31, 1997, the petitioner agreed to make the mortgage payments if Ames Management did not. 1st United would have the right to proceed against the petitioner without first proceeding against Ames Management or against any property securing the note.

As the guarantee does not **obligate** 1st United to proceed against the petitioner, it does not prohibit 1st United from first seeking payment from the business.[2] The petitioner's personal guarantee of payment does not change the character of the mortgage; the assets of Ames Management are still primarily securing the mortgage. As such, the $1.7 million that the mortgage represents cannot properly be considered an investment of the petitioner's capital.

Purchase of the van, pre-opening expenses, and corporate accounts.

On November 1, 1997, Ames Management purchased a van to be used as the hotel shuttle. The petitioner made a down payment of $8,000 and Ames Management financed the balance of $17,477.06 through Primus. Counsel and the petitioner count this van as part of the petitioner's investment. The loan through Primus does not constitute a qualifying investment of capital because it is secured by the van itself, which is an asset of Ames Management; moreover, it is not an investment of the *petitioner's* capital because it is a loan obtained by Ames and not by the petitioner.

The $8,000 down payment also does not qualify as an "investment" of the petitioner's funds; according to the Transactions by Account referenced above, it is part of the $922,136.09 in long-term loans payable to the petitioner. In other words, the $8,000 must be repaid to the petitioner.

Counsel and the petitioner include bank accounts and pre-opening expenses as investments in Ames Management. The pre-opening expenses of $44,836.09, however, appear on the Transactions by Account and are part of the long-term loans payable to the petitioner. The amounts transferred to the bank accounts also appear on the Transactions by Account as long-term loans and therefore cannot constitute qualifying investments.

---

[2]It is not clear why, in the event of default, 1st United would prefer to research and pursue the petitioner's personal assets, which are not specified in the guarantee and which do not total $1.7 million, in lieu of seizing the easily accessible hotel itself.

Resources to invest.

As discussed above, the petitioner has not made a qualifying investment in Ames because the amounts he has paid on behalf of Ames are mere loans to Ames, prohibited by the regulations. It should be noted that the petitioner has not documented that he has the means to begin the process of investing, either. He submits a personal net worth report as of November 30, 1997, purporting to show that his net worth is $761,747.02. It is not clear who prepared this report, and the report contains certain irregularities. For example, the hotel, which belongs to Ames Management, is counted among the petitioner's personal assets. Also, the mortgage held by Ames Management is included among the petitioner's personal liabilities. On the other hand, the hotel van owned by Ames Management is correctly omitted from the report. In effect, with this personal net worth report the petitioner is attempting to show that he has sufficient wealth to invest in the hotel because he has invested in the hotel. Subtracting the hotel entries leaves the petitioner's alleged net worth at $61,747.02.

The petitioner counts the funds in various personal bank accounts as part of his personal assets. A letter and bank statements from Barnett Bank reveal that the petitioner has held *joint* accounts with his father since October 1994. It is not possible to determine what portions of these accounts belong to the petitioner's father and what portions to the petitioner. Unlike the situation of a husband and wife, funds in a pooled joint account cannot be attributed to only one person.

A letter from Bank Boston states that, since April 1997, "Ames Resources Limited maintains an International Private Banking Relationship" with BankBoston. The petitioner is the secretary of Ames Resources Limited, and the account has always had balances in the mid seven figures. These funds belong to Ames Resources Limited, a corporation, and do not belong to the petitioner, an individual. Furthermore, "Ames Resources Limited" is not the same thing as "Ames Management, Inc.," and at most, this letter indicates that the petitioner serves as an officer at a separate corporation in addition to his own corporation, and that this separate corporation has a bank account with BankBoston.

Source of funds.

The source of the funds lent to the petitioner (and in turn lent to Ames Management) has also not been adequately documented. The petitioner claims that the first $450,000 came from personal savings and the sale of "a house." The second $500,000 came from the sale of "our business." No

documentation, such as a sales contract or deed establishing ownership and price, has been submitted regarding the house or the business. Such documentation is relevant to the question of whether the funds have been lawfully obtained, which is a requirement under 8 C.F.R. § 204.6(j)(3).[3] Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In summary, the petitioner has failed to demonstrate that he has invested, or is actively in the process of investing, the requisite amount of capital obtained by lawful means. The amounts referenced by the petitioner either do not constitute qualifying "capital," because they are not his, or have not been properly "invested," because they are debt arrangements between the petitioner and his business. Even if the petitioner and Ames were to be considered one and the same entity, the loans obtained by Ames from other banks would not be considered qualifying capital because they are secured by assets of the business. The petitioner has also failed to document the source of his funds other than to say that the funds are a loan from his father.

THE PETITIONER HAS FAILED TO ESTABLISH A NEW COMMERCIAL ENTERPRISE.

8 C.F.R. § 204.6(h) states that the establishment of a new commercial enterprise may consist of:

> (1) The creation of an original business;
>
> (2) The purchase of an existing business and simultaneous or subsequent restructuring or reorganization such that a new commercial enterprise results; or
>
> (3) The expansion of an existing business through the investment of the required amount, so that a substantial change in the net worth or number of employees results from the investment of capital. Substantial change means a 40 percent increase either in the net worth, or in the number of employees, so that the new net worth, or number of employees amounts to at least 140 percent of the pre-expansion net worth or number of employees. Establishment of a new commercial enterprise in this manner does not exempt the petitioner from the requirements of 8 C.F.R. § 204.6(j)(2) and (3) relating to the required amount of capital investment and the creation of full-time employment for ten qualifying employees. In the case of a capital investment in a troubled business, employment creation may meet the criteria set forth in 8 C.F.R. § 204.6(j)(4)(ii).

---

[3] A petitioner must also establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are his own. The petitioner has already conceded that the funds lent to Ames are not his; the funds belong to his father and must be repaid.

8 C.F.R. § 204.6(e) states that:

> *Troubled business* means a business that has been in existence for at least two years, has incurred a net loss for accounting purposes (determined on the basis of generally accepted accounting principles) during the twelve- or twenty-four month period prior to the priority date on the alien entrepreneur's Form I-526, and the loss for such period is at least equal to twenty percent of the troubled business's net worth prior to such loss. For purposes of determining whether or not the troubled business has been in existence for two years, successors in interest to the troubled business will be deemed to have been in existence for the same period of time as the business they succeeded.

Although Ames Management was incorporated in 1997, it is the job-creating business that must be examined in determining whether a new commercial enterprise has been created. The Howard Johnson's Motor Lodge purchased by Ames Management had been in operation for approximately 24 years and was an ongoing business at the time of purchase; Ames Management, doing business as Howard Johnson Hotel, has merely replaced the former owner.

The petitioner has provided no documentation whatsoever to establish that the Howard Johnson's was a "troubled business," as defined above, prior to his purchase. He also does not claim that he will expand the hotel by 40 percent as provided in 8 C.F.R. § 204.6(h)(3). The petitioner has not shown the degree of restructuring and reorganization required by 8 C.F.R. § 204.6(h)(2); the hotel has always been a Howard Johnson and is still a Howard Johnson today. A few cosmetic changes to the decor and a new marketing strategy for success do not constitute the kind of restructuring contemplated by the regulations, nor does a simple change in ownership. Therefore, it cannot be concluded that the petitioner has created a new commercial enterprise.

THE PETITIONER HAS NOT ESTABLISHED THE REQUISITE EMPLOYMENT CREATION.

8 C.F.R. § 204.6(j)(4) discusses job creation, and states:

> (i) *General.* To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:
>
> (A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
>
> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

> (ii) *Troubled business.* To show that a new commercial enterprise which has been established through a capital investment in a troubled business meets the statutory employment creation requirement, the petition must be accompanied by evidence that the number of existing employees is being or will be maintained at no less than the pre-investment level for a period of at least two years. Photocopies of tax records, Forms I-9, or other relevant documents for the qualifying employees and a comprehensive business plan shall be submitted in support of the petition.

8 C.F.R. § 204.6(e) states, in pertinent part:

> *Employee* means an individual who provides services or labor for the new commercial enterprise and who receives wages or other remuneration directly from the new commercial enterprise...This definition shall not include independent contractors.
>
> *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.

In a letter dated January 15, 1998, the petitioner states that Ames Management employs 23 full-time United State citizens or lawful permanent residents. It also employs part-time employees on an as-needed basis, as well as multiple subcontractors.

Section 5.1.19 of the Agreement for Sale and Purchase refers to an Exhibit H containing the payroll of the Howard Johnson's Motor Lodge as of the date of the petitioner's purchase. The petitioner has furnished copies of the neatly-labeled exhibits, but the only document between Exhibit G and Exhibit I is an unlabeled, one-page worksheet. This worksheet, for the 1997 quarter to date, merely provides the amount of taxes withheld, wages paid, etc. It does not name any of the employees or specify the positions held or hours worked, although it does mention the number of employees as 29.

To show the current level of employment at the hotel, the petitioner has supplied the payroll journal for the period ending November 28, 1997. Assuming that this journal reflects one week of work and not two, only 16 individuals clearly worked at least the minimum 35 hours to be considered full-time employees.[4] Another three were paid salaries and not by the hour, while the last three worked fewer than 35 hours and must be considered part-time employees. The petitioner has submitted a Form I-9 for one other person who was hired after the date of the payroll journal. At most, the hotel employs 20 full-time workers. The petitioner has not established that this figure constitutes either the maintenance of the previous level of full-time

[4]If the payroll journal reflects *two* weeks of work instead of one, then only two individuals worked at least the minimum 70 hours to be considered full-time employees.

employment or the addition of 10 new, full-time positions. As noted above, the hotel previously had 29 employees of unknown designation.

If a petitioner has not already created the requisite number of positions, he must submit a comprehensive business plan clearly demonstrating that the business will need the applicable level of employment. 8 C.F.R. § 204.6(j)(4)(i)(B), The plan must contain a timetable for hiring and must be credible. The petitioner has provided a Marketing Plan 1998 for the hotel. The plan discusses, in detail, the petitioner's marketing strategies and employee-incentive programs, among other things. It does not address the issue of hiring, however. While the plan states that a new position will be created in sales, the person named to occupy this position, Janet Mills, has been working at the hotel since 1994.

CONCLUSION.

In conclusion, the petitioner is ineligible for classification as an alien entrepreneur because he has failed to show that he has invested, or is actively in the process of investing, the requisite amount of money. In every transaction, he has attempted to distance himself from making an actual investment in Ames Management by instead becoming Ames Management's creditor. The petitioner has not shown that Ames Management has been established with anything but loans; in essence, the petitioner has attempted to create something from nothing. The petitioner has further failed to demonstrate that he has established a "new" commercial enterprise, and he has failed to show that his business has or will engage in either employment maintenance or employment creation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the petition is denied.

ORDER: The decision of the director is reversed. The petition is denied.

In re HO, Petitioner

In Visa Petition Proceedings

[redacted] (b)(6)

Decided by the Associate Commissioner, Examinations, July 31, 1998.

(1) Merely establishing and capitalizing a new commercial enterprise and signing a commercial lease are not sufficient to show that an immigrant-investor petitioner has placed his capital at risk. The petitioner must present, instead, evidence that he has actually undertaken meaningful concrete business activity.

(2) The petitioner must establish that he has placed his own capital at risk, that is to say, he must show that he was the legal owner of the invested capital. Bank statements and other financial documents do not meet this requirement if the documents show someone else as the legal owner of the capital.

(3) The petitioner must also establish that he acquired the legal ownership of the invested capital through lawful means. Mere assertions about the petitioner's financial situation or work history, without supporting documentary evidence, are not sufficient to meet this requirement.

(4) To establish that qualifying employment positions have been created, INS Forms I-9 presented by a petitioner must be accompanied by other evidence to show that these employees have commenced work activities and have been hired in permanent, full-time positions.

(5) In order to demonstrate that the new commercial enterprise will create not fewer than 10 full-time positions, the petitioner must either provide evidence that the new commercial enterprise has created such positions or furnish a comprehensive, detailed, and credible business plan demonstrating the need for the positions and the schedule for hiring the employees.

ON BEHALF OF PETITIONER: JOHN L. SUN
3550 WILSHIRE BOULEVARD, SUITE 1250
LOS ANGELES, CA 90010-2413

DISCUSSION

The preference visa petition was approved by the Director, California Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be reversed.

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5), The director determined that the petitioner had already invest-

ed the requisite amount of capital, apparently obtained through lawful means. The director further found that, while the business had only two employees at the time of her decision, the business plan called for at least eight more employees within the next 12 months.

The petitioner has chosen not to respond.

Section 203(b)(5)(A) of the Act provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

> (i) which the alien has established,
>
> (ii) 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
>
> (iii) 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).

The petitioner indicates that the petition is based on the creation of a new business located in a targeted employment area, for which the required amount of capital invested has been adjusted downward.

MINIMUM INVESTMENT AMOUNT

8 C.F.R. § 204.6(e) states, in pertinent part, that:

> *Targeted employment area* means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

On December 18, 1997, King's Wheel Corp. filed its articles of incorporation with the State of California. According to the petitioner, who is the president, director, and chief executive officer of the corporation, King's Wheel will import steel and aluminum automobile wheels from Taiwan and market them in the United States as a wholesaler. On December 20, 1997, the petitioner signed a lease on behalf of King's Wheel for an "office and warehouse" located at 350 W. Artesia Boulevard in Compton, California.

Compton is in Los Angeles County, and the most current information available from the California Employment Development Department indicates that all of Los Angeles County is an area of sufficiently high unemployment to qualify as a targeted area. Therefore, the amount of capital necessary to make a qualifying investment in this matter is $500,000.

INVESTMENT OF QUALIFYING CAPITAL

8 C.F.R. § 204.6(e) states, in pertinent part, that:

> *Capital* means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness, ...
>
> *Commercial enterprise* means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned. This definition 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. This definition shall not include a non-commercial activity such as owning and operating a personal residence.
>
> *Invest* means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

8 C.F.R. § 204.6(j) states, in pertinent part, that:

> (2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner 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. Such evidence may include, but need not be limited to:
>
> (i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;
>
> (ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices; sales receipts; and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;
>
> (iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;
>
> (iv) Evidence of monies transferred or committed to be transferred to the new com-

mercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred), Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

On December 30, 1997, the sum of $515,000 was transferred from an unidentified bank account to one of King's Wheel's business accounts at Cathay Bank, and the business account was credited $514,995. On January 5, 1998, the petitioner obtained 500,000 of the one million authorized shares of King's Wheel; the petitioner indicates that these shares were in exchange for $500,000.

Capital at risk

Even though the petitioner owns only half of the authorized shares in King's Wheel, he is the sole shareholder thus far. He is also the only officer of the corporation. As such, the petitioner exercises sole control over the corporation's activities; whether the business proceeds according to plan or whether, for example, the business returns the petitioner's money is the petitioner's decision alone. Therefore, the petitioner cannot meet his at-risk requirement by merely depositing funds into a corporate account.

The business plan indicates that sales would commence in three to six months from the date of submission of the petition (January 12, 1998), yet the petitioner has not undertaken the necessary preparations to meet this deadline. The petitioner has not submitted evidence that King's Wheel has purchased inventory or office equipment. The petitioner has not shown that he has entered into negotiations with potential suppliers of wheels abroad, nor has he even identified who his potential suppliers are. The petitioner has not provided evidence that he has identified or entered into negotiations with potential buyers within the United States. The petitioner has not even furnished evidence that he has contracted with the suppliers of local utilities, such as the telephone or electric companies. The petitioner has not adequately explained how the business will go about spending the $500,000 that have been placed into its account. Although the petitioner has signed a lease for King's Wheel's showroom, the lease contains an escape clause at section 14, allowing King's Wheel to assign the lease or sublet the property with consent from the landlord.

The regulations provide that a petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. A mere

deposit into a corporate money-market account, such that the petitioner himself still exercises sole control over the funds, hardly qualifies as an active, at-risk investment.[1] 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. 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.

Source of funds

8 C.F.R. § 204.6(j) states, in pertinent part, that:

> (3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petitioner must be accompanied, as applicable, by:
>
> (i) Foreign business registration records;
>
> (ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;
>
> (iii) Evidence identifying any other source(s) of capital; or
>
> (iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

To show that he has invested his own capital obtained through lawful means, the petitioner has furnished copies of bank statements showing that as of December 12, 1997, he had NT$1,339,447 (less than US$41,000[2]) on deposit at the Bank of Taiwan, and as of December 23, 1997, an individual named "Ho Wang Chung-Chia, Theresa Wang" had NT$6,255,844.52

[1]King's Wheel has two accounts at Cathay Bank: the money-market account into which the $514,995 were deposited and a commercial checking account containing $3,100. The petitioner has not shown any activity in either account.

[2]This figure assumes an exchange rate of NT$32.68 = US$1, which appears in the materials submitted by the petitioner. The current exchange rate is closer to NT$34.27 = US$1. WASHINGTON POST, July 21, 1998, at C10.

(US$191,427.31) on deposit at the First Commercial Bank. The petitioner has also submitted a letter from the United World Chinese Commercial Bank indicating that he holds 506,000 shares of capital stock in the bank, and as of December 22, 1997, those shares were worth NT$30,866,000. A letter from United Orthopedic Corporation states, "Mrs. Ho Wang Chung-Chia, also known as Theresa Wang has invested N.T.$1,000,000 in United Orthopedic Corp." On December 19, 1997, Ms. Chung-Chia Ho Wang's single unit on the 11th floor of an 18-story, 147-unit condominium in Taiwan was appraised at NT$6,502,348 (less than US$199,000).

The petitioner asserts that Chung-Chia Ho Wang is his wife; however, he has submitted no documentation, such as a marriage certificate, to substantiate this claim.[3] Even if Ms. Wang is the petitioner's wife, and even if her assets can be considered joint property, the petitioner has failed to establish the source of the funds transferred to the King's Wheel money-market account, totalling $515,000. Prior to the date of transfer, neither Taiwanese bank account contained sufficient funds; in fact, the two accounts together contained less than $250,000. Neither the petitioner nor Ms. Wang has sold any shares of stock in the Taiwanese corporations, and Ms. Wang appears still to own the condominium unit. As stated earlier, the wire-transfer receipt does not reveal from what bank account(s) the funds originated.

Furthermore, while the petitioner claims to have been a medical doctor in Taiwan, he has not presented any evidence of his having engaged in this occupation, nor has he provided any documentation regarding his level of income. The petitioner explains that, through his medical practice and investments, he has accumulated "liquid assets" of approximately US$1.4 million, and therefore the source of his $500,000 is lawful. The above documentation does not reflect $1.4 million in liquid assets; moreover, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

EMPLOYMENT CREATION

8 C.F.R. § 204.6(j)(4)(i) states:

To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:

(A) Documentation consisting of photocopies of relevant tax records, Form I-9, or

[3]The real-estate appraisal indicates that Ms. Wang's name changed to "Ho" after marriage, but "Ho" is a common Chinese name.

> other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
>
> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

8 C.F.R. § 204.6(e) states, in pertinent part:

> *Employee* means an individual who provides services or labor for the new commercial enterprise and who receive wages or other remuneration directly from the new commercial enterprise...This definition shall not include independent contractors.
>
> *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.
>
> *Qualifying employee* means a United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation. This definition does not include the alien entrepreneur, the alien entrepreneur's spouse, sons, or daughters, or any nonimmigrant alien.

As evidence that two positions have already been created, the petitioner has submitted two Forms I-9 completed just three days prior to the date he signed the Form I-526 petition. The business plan calls for the hiring of eight employees within the next 12 months: a secretary, an accounting clerk, a truck driver, two warehouse people, and three salespersons.

With respect to the two persons identified in the Forms I-9, the petitioner has not explained what positions they occupy, and it is not known whether they work full- or part-time or whether they work at all. Forms I-9 verify, at best, that a business has made an effort to ascertain whether particular individuals are authorized to work; they do not verify that those individuals have actually begun working. In the absence of such evidence as paystubs and payroll records showing the number of hours worked, the petitioner has not met his burden of establishing that he has created full-time employment within the United States.

In addition, as the business plan fails to reveal what these two individuals do, it is not altogether clear that they would still be needed once sales commenced and the business progressed beyond its "planning stage." The petitioner has not demonstrated that he has created permanent employment.

According to 8 C.F.R. § 204.6(j)(4)(i)(B), if a petitioner has not already met the employment-creation requirement, he must submit a comprehensive business plan from which it is clear that the business will in fact require

10 qualifying employees within the next two years. To be "comprehensive," a business plan must be sufficiently detailed to permit the Service to draw reasonable inferences about the job-creation potential. Mere conclusory assertions do not enable the Service to determine whether the job-creation projections are any more reliable than hopeful speculation.

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. The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor.[4] Most importantly, the business plan must be credible.

Certainly no astute investor would place half a million or a million dollars into a business that he had not thoroughly researched. Creating a comprehensive business plan as described above is normal practice for any businessman seeking to operate a viable business. Without knowing whether a business is feasible and has the potential for long-term survival, neither the petitioner nor the Service can reasonably conclude that it will create permanent, full-time employment. It is not too onerous to ask a petitioner who has not yet met the employment-creation requirement to submit to the Service a real business plan. Other administrative agencies, such as the Small Business Administration, and private financial institutions routinely require the submission of detailed business plans before extending loans to businesses. Permanent resident status is no less significant a matter than a loan.

The petitioner's four-page "business plan" is wholly inadequate and fails to meet the petitioner's burden of showing that he will create 10 permanent, full-time positions within the next two years.

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[4]The Service recognizes that each business is different and will require different information in its business plan. These guidelines, therefore, are not all-inclusive.

CONCLUSION

The petitioner is ineligible for classification as an alien entrepreneur because he has failed to establish that he has made an active, at-risk investment and has failed to clarify the source of his funds. The petitioner has further failed to demonstrate clearly that his proposed business will result in the requisite employment creation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the petition is denied.

ORDER: The decision of the director is reversed. The petition is denied.

In re NEW YORK STATE DEPT OF TRANSPORTATION, Petitioner

In Visa Petition Proceedings

(b)(6) [redacted]

Designated by the Acting Associate Commissioner, Programs, August 7, 1998

(1) An alien seeking immigrant classification as an alien of exceptional ability or as a member of the professions holding an advanced degree cannot meet the threshold for a national interest waiver of the job offer requirement simply by establishing a certain level of training or education which could be articulated on an application for a labor certification.

(2) General arguments regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field or seeking an as yet undiscovered solution to the problematic issue.

(3) A shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

ON BEHALF OF PETITIONER: Jill Nagy
Lee and LeForestier, P.C.
Box 1054
Second Street
Troy, NY 12180

DISCUSSION

The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.[1]

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2), as

[1]This decision was originally entered on April 27, 1998. The matter has been reopened on Service motion for the limited purpose of incorporating revisions for publication.

In re IZUMMI, Petitioner

In Visa Petition Proceedings

(b)(6) [redacted]

Decided by the Associate Commissioner, Examinations, July 13, 1998.

(1) Regardless of its location, a new commercial enterprise that is engaged directly or indirectly in lending money to job-creating businesses may only lend money to businesses located within targeted areas in order for a petitioner to be eligible for the reduced minimum capital requirement.

(2) Under the Immigrant Investor Pilot Program, if a new commercial enterprise is engaged directly or indirectly in lending money to job-creating businesses, such job-creating businesses must all be located within the geographic limits of the regional center. The location of the new commercial enterprise is not controlling.

(3) A petitioner may not make material changes to his petition in aneffort to make a deficient petition conform to Service requirements.

(4) If the new commercial enterprise is a holding company, the full requisite amount of capital must be made available to the business(es) most closely responsible for creating the employment on which the petition is based.

(5) An alien may not receive guaranteed payments from a new commercial enterprise while he owes money to the new commercial enterprise.

(6) An alien may not enter into a redemption agreement with the new commercial enterprise at any time prior to completing all of his cash payments under a promissory note. In no event may the alien enter into a redemption agreement prior to the end of the two-year period of conditional residence.

(7) A redemption agreement between an alien investor and the new commercial enterprise constitutes a debt arrangement and is prohibited under 8 C.F.R. § 204.6(e).

(8) Reserve funds that are not made available for purposes of job creation cannot be considered capital placed at risk for the purpose of generating a return on the capital being placed at risk.

(9) The Service does not pre-adjudicate immigrant-investor petitions; each petition must be adjudicated on its own merits.

(10) Under 8 C.F.R. § 204.6(e), all capital must be valued at fair market value in United States dollars, including promissory notes used as capital. In determining the fair market value of a

promissory note, it is necessary to consider, among other things, present value.

(11) Under certain circumstances, a promissory note that does not itself constitute capital may constitute evidence that the alien is "in the process of investing" other capital, such as cash. In such a case, the petitioner must substantially complete payments on the promissory note prior to the end of the two-year conditional period.

(12) Whether the promissory note constitutes capital or is simply evidence that the alien is in the process of investing other capital, nearly all of the money due under the promissory note must be payable within two years, without provisions for extensions.

(13) In order for a petitioner to be considered to have established an original business, he must have had a hand in its actual creation.

ON BEHALF OF PETITIONER: MAURICE INMAN/FREDRICK W. VOIGTMANN
1925 CENTURY PARK EAST, 16TH FLOOR
LOS ANGELES, CA 90067

DISCUSSION

The preference visa petition was denied by the Director, Texas Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be affirmed.

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5), and section 610 of the Appropriations Act of 1993. The director determined that the petitioner had failed to establish that he had placed the requisite capital at risk. The director made the following findings: $30,000 of the claimed contribution would be used for the expenses of the Partnership rather than being infused into the subsidiary commercial enterprise for the purpose of employment creation; the majority of the remaining capital would not be available for job creation because the Partnership was required to maintain it in reserves; part of the petitioner's capital contribution was not an investment because it was made in exchange for a debt arrangement; and another part of the petitioner's contribution would derive from guaranteed annual interest payments received from the Partnership.

In response, the petitioner submits two separate briefs, two supplemental briefs, and numerous exhibits. He contends that the director's decision misstates existing facts and mischaracterizes the provisions of the American Export Limited Partnership ("AELP") investor program. The petitioner also complains that the director's decision fails to mention, distinguish, or "explain away" approvals of other AELP petitions by both the Texas Service Center and Vermont Service Center; furthermore, the director's decision fails to mention, distinguish, or "explain away" prior Service opin-

ions and communications that directly supported and authorized the use of various features of the AELP program. The petitioner states that, even if the director had been correct in denying the petition, certain new amendments to the partnership plan should cause the Administrative Appeals Unit (AAU) to approve his petition.

Oral argument was granted in this case, and during his presentation counsel reiterated the points made in the brief. Counsel emphasized that the petitioner had made an investment by executing and delivering the promissory note for $500,000; the schedule of future payments under the note was irrelevant.

Section 203(b)(5)(A) of the Act provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

> (i) which the alien has established,
>
> (ii) 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
>
> (iii) 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).

The petitioner indicates that the petition is based on an investment in a new business in a targeted employment area for which the required amount of capital invested has been adjusted downward. In addition, the business is located in an area designated as a "regional center" authorized to participate in the Immigrant Investor Pilot Program.

THE PETITIONER HAS NOT DEMONSTRATED THAT AELP IS ENGAGING IN APPROVED REGIONAL-CENTER ACTIVITIES IN TARGETED EMPLOYMENT AREAS

8 C.F.R. § 204.6(e) states, in pertinent part, that:

> *Targeted employment area* means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

8 C.F.R. § 204.6(j)(6) states that:

> If applicable, to show that the new commercial enterprise has created or will create employment in a targeted employment area, the petition must be accompanied by:

(i) In the case of a rural area, evidence that the new commercial enterprise is principally doing business within a civil jurisdiction not located within any standard metropolitan statistical area as designated by the Office of Management and Budget, or within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States; or

(ii) In the case of a high unemployment area:

(A) Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business has experienced an average unemployment rate of 150 percent of the national average rate; or

(B) A letter from an authorized body of the government of the state in which the new commercial enterprise is located which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. The letter must meet the requirements of 8 C.F.R. § 204.6(i).

On October 19, 1995, American Export Partners, LLC ("AEP") filed its articles of organization with the State of South Carolina. On March 25, 1996, AELP filed its certificate of limited partnership with the State of South Carolina, and AEP was designated as AELP's general partner. Both AEP and AELP are located in Charleston, South Carolina.

In a letter dated February 8, 1995, the Assistant Commissioner for Adjudications designated AEP a regional center and specified that individuals could file petitions with the Service "for new commercial enterprises located within the eight-county coastal areas, or Lowcountry, of South Carolina." On June 14, 1995, the Acting Assistant Commissioner for Adjudications expanded the geographical area covered by the AEP regional center to include 22 other counties in South Carolina.

The petitioner has presented evidence that many, but not all, of the counties within this regional center were considered rural in 1995 and qualified at that time as targeted employment areas.[1]

In his brief, the petitioner explains that AELP has established a commercial credit corporation subsidiary, American Commercial and Export Credit Company, Inc., with its co-venturer, Resurgens Capital & Investment. This credit company makes asset-based loans and engages in receivables financing for small export companies "located throughout South Carolina and the southeastern United States." The capital provided by the alien investors to AELP is used to purchase stock in the credit com-

[1]Of the 22 new counties added to the regional-center area, Aiken, Edgefield, Lexington, Richland, and Sumter counties were not targeted employment areas in 1995.

pany, and the credit company uses this money to secure loans from an institutional bank lender. This other lender will increase the capital by a factor of three or four. The petitioner claims that the credit company has succeeded in placing "several" loans already.

According to the materials submitted, the credit company has extended or purchased four loans to date. The credit company has purchased a $780,000 loan that had been extended to Pillow Perfect, Inc. by First Capital Bank; Pillow Perfect is located in Woodstock, Georgia. The credit company has purchased a $380,000 loan that had been extended to Pointe Services, Inc. by First Capital Bank; Pointe Services is located in Atlanta, Georgia. The credit company has extended a $200,000 loan to Advanced Technology Services, Inc. located in Atlanta, Georgia. Finally, the credit company has extended a $1,000 loan to Bitz America, Inc., in Martinez, Georgia.

It is not known how much the credit company paid to purchase the loans involving Pillow Perfect and Pointe Services. The above four loans evidence at most the use of only $1,361,000 of the funds obtained from the first 95 investors who were granted under this program.[2] The petitioner has provided loan-prospect reports from October 1997 and February 1998; these reports show that the credit company has proposed (but not succeeded in) lending money to various companies in Norcross, Oakwood, Atlanta, and Marietta, Georgia as well as Miami and Orlando, Florida.

Pillow Perfect is located in Cherokee County, Georgia; according to the employment information submitted by counsel, Cherokee County did not have any census tracts that qualified as areas of high unemployment in 1995. Pointe Services and Advanced Technology Services, Inc., are located in Fulton County. The petitioner has not demonstrated that these companies are located in the particular census tracts that qualified as areas of high unemployment in 1995 or in any other year. Nor has the petitioner shown that Bitz America is located in a targeted employment area.

The few transactions in which the credit company has engaged have not been shown to benefit companies located in targeted employment areas.[3] Even the businesses considered "loan prospects" are not located in targeted employment areas. Neither the credit company, headquartered in Atlanta, nor AELP, headquartered in Charleston, has been shown to be located in a targeted employment area. Therefore, the amount of capital necessary to make a qualifying investment in this matter is $1,000,000.

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[2]This computes to approximately $14,327 per investor, far short of the requisite $500,000 per investor.

[3]It is noted that the employment information provided by counsel is out of date, in any event. A petitioner must establish that certain areas are targeted employment areas as of the date he files his petition; just because a particular area used to be rural many years ago, for example, does not mean that it still is.

Also, the regional-center designation in this case was granted for most of the counties in South Carolina. It did not extend to Georgia or Florida. While AELP is located in South Carolina, neither the credit company extending the actual loans nor the companies receiving the loans are located within the regional center. Therefore, the petitioner must establish direct employment creation.

The petitioner states in his brief that the Service had expressly permitted the use of the subsidiary credit corporation as a vehicle for making loans to export-related businesses not related to the regional center. He refers to a letter dated September 27, 1995, from the Chief of the Immigrant Branch, Adjudications, who was asked whether the customers of an export credit corporation needed to be located within the region covered by the regional-center designation. The Chief's response did not directly address this question; instead, he stated, "Although the regional center should focus on a geographical area, there is no requirement in either the statute or the regulations that the exports generated under the Pilot Program be **produced or manufactured** within the area designated by the regional center," (emphasis added).[4] The petitioner concludes that the credit company may extend loans to any export-related company located anywhere.

Such an interpretation renders the geographical limitation of a regional center meaningless. The definition of "regional center" in 8 C.F.R. § 204.6(e) requires that the economic unit be involved in "improved regional productivity." 8 C.F.R. § 204.6(m)(3)(i) states that, in order to gain approval as a regional center, an entity must describe clearly how it will promote economic growth through "improved regional productivity." If neither the credit company nor the export-related businesses are located in the regional center, it is difficult to see how the productivity within the regional center is being improved.[5]

As the subsidiary credit corporation's actual and proposed loan activities benefit companies outside the geographical area covered by the regional-center designation granted in this case, the petitioner must estab-

[4]Not all export-related businesses produce or manufacture their own goods. For example, if a bank located within the regional center were to lend money to a company that exported chicken parts to Russia, the chickens would not have to have been raised within the specific geographical area; the export company would have to be located within the area, however. Similarly, the bank could permissibly lend money to a company located in the geographical area that exported cosmetics, jeans, and American rice to Japan; these products would likely not have been produced or manufactured within the area. It is not sufficient for just the bank, or the bank's primary shareholder, to be located in the regional center

[5]Even if the credit company here were located within the regional center rather than in Atlanta, the arrangement would still not qualify. The only improved regional productivity would concern the salaries of a few loan officers; this is not what was intended by the regional-center provisions.

lish direct employment creation; he cannot rely on indirect employment creation. For the sake of argument, however, the AAU will analyze the investment portion of this case using his claim of indirect employment creation.

CERTAIN REVISIONS TO THE PARTNERSHIP AGREEMENT CANNOT BE ACCEPTED

Subsequent to the issuance of the director's decision, counsel has submitted numerous revisions to AELP's limited partnership agreement. He explains that the revisions are in the form of Stage I and Stage II amendments.

The original partnership agreement had been prepared and executed in March of 1996, prior to the creation of an initial payment option of $120,000. When the $120,000 option was added to AELP's program in the fall of 1996, AELP neglected to amend the partnership agreement. As a result, many provisions within the documents signed by this petitioner contradict provisions within the official partnership agreement. The Stage I amendments are intended to correct these inconsistencies.

In addition, after the attorneys for AELP obtained a copy of a memorandum issued in December of 1997 by the Service's Office of General Counsel ("OGC"), "the Limited Partnership Agreement of AELP was further amended to restructure, amend or eliminate some or all of [the] 'objected-to' provisions." These Stage II amendments, counsel continues, should render the instant petition approvable.

A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971), 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 Service requirements.

Counsel states that petitions have previously been amended to reflect program changes and to cure defects in the original documents. He refers to a 1995 case in which the center director had correctly found that the business at issue did not constitute a troubled business. At oral argument in that case, counsel presented a completely different business plan that abandoned the troubled-business claim and substituted a plan to create a new business instead. This new business plan formed the basis of an approval. The case referenced by counsel, however, resulted in an unpublished decision that did not have any precedential value, procedural or otherwise. Furthermore, the AAU acknowledges that acceptance of the new business plan at such a late date was improper and erroneous.

In the case at hand, the AAU will recognize the Stage I amendments to the extent that they cause the partnership agreement to conform to the other

agreements that this petitioner had originally executed and submitted with his Form I-526. The AAU will make no determination as to the adequacy or inadequacy of the Stage II amendments, as they are irrelevant in this proceeding; the Service cannot consider facts that come into being only subsequent to the filing of a petition. *See Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981). If counsel had wished to test the validity of the newest plan, which is materially different from the original plan, he should have withdrawn the instant petition and advised the petitioner to file a new Form I-526. The case shall be analyzed only on the basis of the original documents and the revisions that correct the original inconsistencies.

THE PETITIONER HAS NOT MADE A QUALIFYING "INVESTMENT"

8 C.F.R. § 204.6(e) states, in pertinent part, that

> *Capital* means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. All capital shall be valued at fair market value in United States dollars, ...
>
> *Commercial enterprise* means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned. This definition 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. This definition shall not include a non-commercial activity such as owning and operating a personal residence.
>
> *Invest* means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

8 C.F.R. § 204.6(j) states, in pertinent part, that:

> (2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner 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. Such evidence may include, but need not be limited to:
>
> (i) Bank statement(s) showing amount(s) deposited in United States business

account(s) for the enterprise;

(ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices; sales receipts; and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

(iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

(iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred), Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

Counsel states that the petitioner has made an investment of $500,000 in the form of a $500,000 promissory note. This note provides for an initial deposit of $120,000 into an escrow account, to be released to the partnership upon approval of the immigrant visa, five annual payments of $18,000, and a final balloon payment of $290,000.

Initial Partnership expenses

On October 14, 1997, Wells Fargo Bank notified the petitioner that his funds in the amount of $120,000 had been received and deposited into a custody account for the Partnership. According to section 2.A(3) of the investment agreement, the petitioner agreed to instruct counsel, as trustee of his escrow account, "immediately to release US$30,000 as a refundable advance for initial expenses of the Partnership"; the remaining $90,000 would be released upon approval of the visa application. As pointed out by the director on page 4 of his decision, the use of the $30,000 for Partnership costs and expenses meant that the full $500,000 would not be "infused into the commercial enterprise for the purpose of employment creation."

In response, the petitioner states that it is possible that the director objected to the expenses being released from the escrow account and that the director might not have objected if the expenses had been paid after the funds were released from escrow. Regardless of the timing of the payment, the ultimate payee is the Partnership, the petitioner maintains. The timing

of the payment, however, was not the director's objection. The director cited 8 C.F.R. § 204.6(j)(2) in stating that the required amount of capital must be placed at risk "for the purpose of generating a return on the capital placed at risk." As the payment of initial Partnership expenses and costs was not the type of profit-generating activity contemplated by the regulations, no more than $470,000 could be considered to have been "invested."

The petitioner argues that fees and expenses incurred in the process of raising capital are customary and reasonable. For example, when businesses go to banks for money, the banks charge processing fees, points, appraisal fees, and other expenses that are included in the debt. The petitioner continues:

> It is absurd to suggest that there is no cost to creating an immigrant investor program (attorneys fees, accountant fees, and administrative fees), there is no cost to raising money in the market place (finders fees, immigration consultant fees, forwarding fees, and so forth); and that there are no ongoing administrative and operating expenses during the initial start up phase of the business (rent, utilities, telephones, fax machines, office furniture, personnel costs, executive salaries, etc.), We live in a world of reality, not "make believe."

The petitioner refers to AELP's subsidiary credit company having retained an expert in asset-based loans for an annual salary "in excess of $200,000." What is important, the petitioner emphasizes, is that the money spent by AELP on initial expenses is in furtherance of the Partnership business.[6]

While points and processing fees are often financed, they are considered an amount over and above the original loan amount. To illustrate, when a person intends to obtain a mortgage for $200,000, he can choose to pay the points and fees separately or he can choose to finance them. If he chooses to finance the fees, the principal on his mortgage is no longer just $200,000 but something more. In the investor context, the Service is not prohibiting the payment of Partnership expenses; rather, the Service is finding that if AELP wishes to have the limited partners pay these expenses, these expenses must be paid in addition to the $500,000.

The petitioner explains that AELP deducts its operating expenses of $30,000, and the remaining funds go to the subsidiary credit corporation. The credit corporation then deducts its own expenses and the leftover money is contributed to a lending fund from which the loans to export companies are made. The petitioner contends that the new commercial enter-

[6]Nevertheless, counsel appears to be prepared to abandon these numerous arguments. In his brief on behalf of the petitioner, counsel states that if the AAU finds that providing for the payment of initial expenses from and out of capital contributed by the investor is improper, then AELP will immediately amend its partnership agreement to eliminate the provision from its program.

prise here is the Partnership, AELP, and an investment of $500,000 in AELP constitutes an investment of $500,000 in the new commercial enterprise, "It was never AELP's intent...that 100% of the funds contributed by the foreign national investors would flow through the partnership and into the credit corporation for lending to U.S. export businesses." After AELP and the credit corporation deduct tens of thousands of dollars for their "expenses," however, it is not clear how much of the original money is made available for loans.

It could perhaps be argued that, when the owner of a corporation pays a million dollars for shares in his business and earmarks the money for equipment, inventory, and working capital, some of the working capital will in fact be spent on initial salaries and expenses. In the partnership scenario, the new commercial enterprise is the partnership, and it too will need to spend money on initial salaries and expenses. The Service distinguishes these two situations in that, in the former example, the employment-creating entity is spending the money. In the latter example, the employment-creating entity never receives the money spent on the partnership's expenses. Especially where indirect employment creation is being claimed, and the nexus between the money and the jobs is already tenuous, the Service has an interest in examining, to a degree, the manner in which funds are being applied. **The full amount of money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based.**[7] The Service does not wish to encourage the creation of layer upon layer of "holding companies" or "parent companies," with each business taking its cut and the ultimate employer seeing very little of the aliens' money.

In his brief on behalf of the petitioner, counsel claims that the deduction of AELP's and the credit company's expenses had previously been disclosed to, and approved by, the Service when the Service approved the general partner's designation as a regional center. The focus of an inquiry into the designation of a regional center, however, has to do with whether proposed activities will improve regional productivity through increased exports; it has nothing to do with the propriety of various business expenses and how they are funded. Counsel also claims that the same facts were disclosed within the past few months, both in writing and during a conference attended by AELP representatives and Service attorneys. Disclosure, though, does not mandate approval.

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[7]Whether or not $500,000 must be made available for the loans to export companies or whether $500,000 must merely be made available to the credit corporation extending the loans, it is clear that making $500,000 available to **AELP** is not sufficient. AELP's primary purpose is apparently to locate potential alien investors. AELP does not extend the loans to the export companies and is not the entity most closely engaged in employment creation, indirect or otherwise.

In his brief on behalf of the petitioner, counsel cites a 1995 case in which the Vermont Service Center had questioned whether $80,000 or $90,000 set aside for fees could be considered an investment of capital. On May 25, 1995, the Administrative Appeals Unit approved the case. Counsel further states, "During oral argument an AAU official stated that it was proper to deduct such fees from the amount of the capital contributed by the investor without thereby reducing the investor's contribution of capital."

The decision rendered by the AAU in that case did not specifically address the issue of fees. In addition, the decision in that case was unpublished and has no precedential value.

Annual payments

According to section 2B of the investment agreement executed by the petitioner, the petitioner must make five annual cash payments of $18,000 each, totalling $90,000, commencing one year from the date he is admitted to the Partnership.

Section 3 of the investment agreement, however, states, "I shall receive a return on the cash I have contributed to the Partnership in the amount of 12% per annum, payable annually, commencing one year from the date I am admitted to the Partnership as a Limited Partner and ending five years thereafter."[8] The petitioner would also receive a share of any profits exceeding this 12-percent return. The partnership agreement explains that the percentage return is computed on the basis of the total cash contributed at the time the distribution is made. In other words, the petitioner's first annual distribution would be at least $14,400 (12 percent of $120,000, plus any additional profits), his second annual distribution at least $16,560 (12 percent of $138,000), his third at least $18,720, his fourth at least $20,880, and his fifth at least $23,040.

In effect, the $90,000 that the petitioner's annual payment obligation represents would require very little in new, personal funds. To make his first annual payment of $18,000, the petitioner would have to contribute no more than $3,600 of his own funds to the $14,400 (or more) he would receive from the Partnership. To make his second payment, the petitioner would have to contribute no more than $1,440 of his own funds to the $16,560 he would receive from the Partnership. The petitioner's third, fourth, and fifth payments, however, would be entirely covered by his guaranteed distributions from the Partnership; in fact, the petitioner would be at least $8,640 ahead for these last three years.

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[8]The original partnership agreement, however, provides that this return is **10** percent per year, payable for **four** years. Counsel does not submit a Stage I amendment for this inconsistency.

The petitioner's obligation to make his annual payments is conditioned upon the Partnership making the guaranteed annual distributions to the petitioner.[9] As such, these annual payments do not constitute a contribution of capital.[10]

The petitioner refers to the OGC memorandum of December 19, 1997, which had criticized the use of profits generated by a business to meet obligations under a promissory note. The petitioner contends that he is entitled to use his guaranteed return for whatever purpose he desires, and it would be absurd to segregate dividends or profits in a special account to guarantee that they would not be used to make payments on the note.

The AAU does not at this time reach the issue of whether it is ever appropriate for a business to distribute profits to an alien who still owes money to the business. The problem addressed here is that the annual returns are **guaranteed**. The fact that title to that money changes hands does not change the essence of the transaction; as the director pointed out in his decision, the Partnership receives no infusion of new funds from the petitioner.

Another problem with guaranteed annual distributions is the source of the distributions. As the petitioner concedes on page 70 of his brief, "[i]t is unlikely that the business will be immediately profitable from the lending activities contemplated by AELP and its credit corporation subsidiary." Since there is never a guarantee that the Partnership will generate sufficient profits during any given year to pay each investor his 12-percent guaranteed distribution, the possibility exists that the distributions may be drawn from the contributions of future limited partners (thereby necessitating the acquisition of more and more limited partners) or from the contributions already made (thereby depleting the initial contributions).

At pages 70 and 71 of his brief on behalf of the petitioner, counsel counters, "The payment of this guaranteed return is an obligation of the partnership which may or may not be met. If the partnership does not have the ability to make such annual payments, they will not be made." As mentioned earlier, this is directly contradicted by section 2.C of the investment agreement, which provides that the failure of the Partnership to make the

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[9]Section 2.C of the investment agreement states, "In the event of the bankruptcy, the insolvency, or the failure of the partnership to pay the annual return on capital, to pay the sell option price, or to pay any judgment, the Partnership shall be deemed to be in breach of its obligations to the Limited Partners under the American Export Limited Partnership Agreement, and I, as a Limited Partner, shall have no further obligations to the Partnership, and furthermore, I shall not be obligated to make any further cash payments under the Limited Partnership Agreement, this Investment Agreement or the Promissory Note."

[10]At most, one could argue that the petitioner must make an initial outlay of $5,040 for the first two payments; but because this amount would be more than offset by the last three guaranteed distributions from the Partnership, this initial outlay is, in effect, a loan. 8 C.F.R. § 204.6(e) specifies that contributions of money in exchange for debt arrangements do not qualify as "investments."

annual distributions is considered a breach of the Partnership's obligations and will cause the petitioner not to have to make any further cash payments.

The petitioner states that Service administrative case law exists supporting a petitioner's application of guaranteed annual returns paid by a partnership toward meeting the petitioner's obligation to make annual payments to the partnership. The petitioner cites an unpublished AAU decision from 1995 involving the "C&W Hotel Management program." While the center director's decision in that case had referred to a provision in the business plan stating that four annual payments might come from the profits of the business, the center director did not note whether these so-called "profits" were in the form of *guaranteed* returns (which would then have no direct connection to profit, as discussed above), and he did not make any finding as to the propriety of this provision. Review of the AAU decision reveals no reference whatsoever to annual returns or annual payments. Therefore, it cannot be said that the AAU has specifically sanctioned the use of guaranteed annual returns toward meeting obligations to make annual payments. More significantly, the AAU decision in question was unpublished and has no binding precedential authority.[11]

The petitioner points to an internal Service memorandum issued on October 20, 1997, by the Office of Adjudications. This memorandum stated that in some cases, guaranteed interest payments were made through outside loans or from capital contributed by other investors; as not all businesses could be profitable immediately, a contractual provision for guaranteed payments may, in certain cases, be consistent with a genuine investment.[12] This memorandum was a general statement of policy and did not analyze any particular fact patterns. Indeed, the statements in the memorandum were qualified with the words "may" and "in certain cases." Given the confusing statements contained in the memorandum, and the lack of guidelines provided, this memorandum provides no assistance in resolving the present case.

In short, because the petitioner is guaranteed annual distributions from the Partnership of at least 12-percent for five years, which would yield him $93,600, the petitioner's five annual payments totalling $90,000 under the promissory note cannot be considered a qualifying contribution of capital.[13]

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[11]The AAU recognizes that the Service has approved plans that may have contained guaranteed annual returns. If so, such approvals were in error for the reasons stated in this decision.

[12]This recent memorandum was superseded by a subsequent memorandum dated March 11, 1998, however.

[13]In apparent recognition of the fact that the petitioner is not contributing capital through the five annual payments, the investment agreement provides, at section 6, that if the conditions of the petitioner's permanent resident status are not removed, the Partnership will refund the petitioner $120,000. Presumably, by the time the petitioner applied for removal of his conditions, he would have made at least one of the annual payments and contributed $138,000.

The petitioner has effectively shifted the risk of loss of the $90,000 from himself to the Partnership.

Redemption agreement

Section 4 of the investment agreement provides, "after the sixth anniversary of my admission to the Partnership, I, as a limited partner, may exercise a sell option under which I have the **right to require** the Partnership to purchase from me my limited partnership interest," (emphasis added).[14] The sell-option price is equal to the petitioner's total contributed capital, less the first six payments, plus a pro rata share of profits. In other words, the sell-option price is $290,000 plus profits. Or, to look at it from the petitioner's perspective, the price of permanent resident status is $116,400 minus profits; as discussed above, the five annual payments are more than fully covered by the annual distributions and do not require any expenditure on the part of the petitioner. At the same time, the Partnership may exercise a buy option for the same price.[15]

Section 4 of the investment agreement specifies that the sell-option price is "payable as soon as the sell option is exercised." Section 8.05C of the original partnership agreement, however, states that the price is payable 180 days after the exercise of the sell option. The revised partnership agreement, instead of conforming to the investment agreement, reiterates the 180-day deadline. While the Stage I amendments were intended to reflect the actual intent of the parties, the petitioner has not executed a new investment agreement or otherwise indicated that he agrees with the new partnership agreement and is willing to wait 180 days.

It is not clear whether the petitioner is obligated actually to make the last payment of $290,000 if he exercises his sell option; both his responsibility to pay and his right to sell ripen at the same time. Section 8.05C of the partnership agreement provides that once the Partnership pays the sell-option price, "all amounts owed under such Selling Limited Partner's Investor Note shall be deemed satisfied by the Partnership..." Similarly, under section 8.06C, after the Partnership pays the buy-option price, "all

[14]The original partnership agreement states that the sell option is exercisable after five years; the revised agreement, pursuant to a Stage I amendment, states that the sell option is exercisable after six years in the case of a limited partner who makes an initial cash payment of $120,000.

[15]Section 8.06 of the original partnership agreement states that this "buy option" is exercisable after **three** years. Pursuant to Stage II amendments, the partnership agreement now states that the buy option is exercisable one year after the petitioner completes his payments under the note, or **seven** years. The revised partnership agreement also mentions sell-option prices of "$410,000? $290,000?" [sic].

amounts due and owing under the Investor Note shall be discharged by the Partnership..." It is not known what amount would still be owed if the petitioner is obligated to pay the $290,000 prior to the exercise of the buy or sell option. If the petitioner can avoid making this last payment by exercising his sell option, this amount of $290,000 cannot be considered to have been placed at risk.

Even if the petitioner is obligated to make this balloon payment prior to exercising his sell option, the $290,000 still cannot be said to be at risk because it is guaranteed to be returned, regardless of the success or failure of the business. If the investment agreement executed by the petitioner is controlling, then the moment he made this last payment, the petitioner could exercise his sell option, and the money would be immediately returned; the amount of $290,000 would never be at risk. If the partnership agreement is controlling, then the petitioner's agreement to make this payment of $290,000 is, in essence, a debt arrangement in which he provides funds in exchange for an unconditional, contractual promise that it will be repaid later at a fixed maturity date (six months later). Such an arrangement is specifically prohibited by the regulations. *See* 8 C.F.R. § 204.6(e).

In its opinion dated December 19, 1997, OGC engaged in a lengthy discussion of the factors evidencing debt and equity in the context of tax law; the opinion cited various tax cases and concluded that the debt characteristics of a plan such as AELP's outweighed any equity characteristics. The AAU finds such a discussion unnecessary and not particularly helpful with respect to this matter. The considerations at issue here are not the same as those of a court attempting to ascertain whether a business is attempting to evade taxes. Furthermore, the businesses examined in those tax cases were standard businesses not created for the purpose of enabling aliens to obtain immigration benefits. As counsel conceded at oral argument, potential alien investors are

> not going to make this investment, under *any* circumstances, unless they get a green card. If anybody ever suggests that this is a wonderful investment and they're going to make it without getting lawful permanent residence, they're lying and they're crazy; they're brain-damaged, all right? Nobody is gonna do this without getting a green card. That was the intent of the law. That's the carrot; that's the quid pro quo.

In other words, AELP has created a program to which most people would be unwilling to subscribe.[16] A discussion of the numerous debt and equity factors set forth in the tax cases unnecessarily complicates the

[16]This, by itself, raises the question of whether the AELP plan is a genuine investment. If normal investors would be unwilling to participate in this program because the chance for a net monetary gain does not exist, then it is logical to conclude that the hoped-for "profit" inherent in this program is the green card itself.

attempt to ascertain the true substance of the transaction. Very simply, the payment of the $290,000 constitutes a straight loan; the petitioner would be making this money available to AELP with the contractual expectation that it would be returned to him six months later. The risk that the petitioner might not receive payment if the Partnership fails is no different from the risk any business creditor incurs.

Counsel states on page 30 of his brief on behalf of the petitioner, "The payment of the sell-option price was dependent upon the Partnership's ability and willingness to pay. Thus, substantial risk existed in that the Partnership might be unable or unwilling to pay the investor." At oral argument, counsel claimed that the redemption provisions were entirely unenforceable; no partner could bring a lawsuit to enforce them. Aside from the question of why not, counsel's statements raise questions of good faith. For AELP to entice aliens to invest in AELP by promising them redemption rights, but then for counsel (who is counsel for both AELP and the petitioner) to suggest in his brief that AELP might not be "willing" to honor the redemption rights, and to add at oral argument that the redemption provisions are not enforceable anyway, is disturbing. While most normal investors in the business world realize that they risk losses due to business downturns, the aliens participating in AELP may not realize that their attorney believes that their risk instead involves the refusal of their attorney's other client to comply with the written contract it executed with them. The Service cannot endorse illusory promises and does not recognize this type of "risk" as the kind of risk contemplated by 8 C.F.R. § 204.6(j)(2).

More importantly, the AAU must look to the plain language of the documents executed by the petitioner and not to subsequent statements of counsel; these documents provide the petitioner with the right to redemption and a certain price. As mentioned earlier, section 2.C of the investment agreement specifies that the failure of AELP to pay the sell-option price constitutes a breach of AELP's obligations to its limited partners.

In its memorandum of September 10, 1993, OGC stated its opinion at page 8 that it was "entirely appropriate for an alien to enter into an agreement with the investment fund whereby the seller agrees to repurchase the investor's shares upon, but not before, removal of the conditional basis of the alien's permanent residence." OGC qualified this statement by adding that such a redemption agreement "may not be used as a vehicle to avoid or reduce the risk of capital loss to the alien investor during the two-year period of conditional residency." To ensure that the capital remained at risk during the two-year period, OGC believed that the repurchase agreement should expressly provide that the price of the shares to be resold could not exceed the fair market value of the shares at the time of repurchase; "[a]ny other repurchase arrangement would impermissibly shift the risk of loss from the investment from the alien to the party promising to buy back the alien's interest in the investment." In a subsequent memorandum dated

June 27, 1995, OGC explained at page 10 that such a redemption agreement was permissible "since the alien risks losing all or part of his own capital in the event the fair market value of the investment has fallen at the time of the repurchase."

The AAU does not entirely agree with the opinions of OGC. To enter into a redemption agreement at the time of making an "investment" evidences a preconceived intent to unburden oneself of the investment as soon as possible after unconditional permanent resident status is attained. This is conceptually no different from a situation in which an alien marries a U.S. citizen and states, in writing, that he will divorce her in two years. The focus here is on the green card and not on the business. Despite counsel's repeated claims that the Service's current position is hurting U.S. workers and U.S. businesses, and despite counsel's accusations regarding the Service's allegedly cavalier attitude toward them, one could argue that an alien who enters into a redemption agreement considers the continued success of the U.S. workers and U.S. businesses secondary. His primary concern is obtaining permanent resident status for as little money as possible.

For the alien's money truly to be at risk, the alien cannot enter into a partnership knowing that he already has a willing buyer in a certain number of years, nor can he be assured that he will receive a certain price. Otherwise, the arrangement is nothing more than a loan, albeit an unsecured one.

The fair-market-value limitation on the sale price referenced by OGC, while well-intended, is not workable. It is not clear how this fair market value would be determined. For example, at page 31 of his brief on behalf of the petitioner, counsel discusses the two five-year payment options offered by AELP prior to the offering of the $120,000 option subscribed to by this petitioner. "Since the AELP sell-option prices were either $150,000 or $140,000 less than the $500,000 cash contribution recently completed, it seemed obvious that the sell-option prices would be substantially below fair market value." The only reason this would be "obvious" would be if counsel already knew what the fair market value would be in five years. True fair market value cannot be known five years in advance. Fair market value assumes the existence of a market. In this case, no public market exists for the AELP partnership interest. The sale of the partnership interest would not be an arms-length transaction, and the valuation of the parties would not reflect a true fair market value.

The AAU does not find that an alien investor may never sell back his partnership interest. Rather, the AAU finds that, prior to completing all his cash payments under a promissory note (whether to the partnership or to some third-party lender), an alien investor may not enter into any agreement granting him the right to sell his interest back to the partnership. In no event may he enter into such an agreement prior to the end of the two-year period of conditional residence. An investment assumes that a risk exists. The

alien must go into the investment not knowing for sure if he will be able to sell his interest at all after he obtains his unconditional permanent resident status; and if he is successful in selling his interest, the sale price may be disappointingly low (or surprising high and more than what he paid), This way, the alien risks both gain and loss. To allow otherwise transforms the arrangement into a loan.[17]

The petitioner contends that the AAU, in the unpublished C&W decision from 1995, had previously considered the issue of whether a structure identical to AELP's constituted a debt arrangement. According to the petitioner, the Vermont Service Center had found that the plan in question appeared to represent a good-faith commitment on a debt agreement, and representatives of the AAU "advised that they had analyzed the investment agreements and had concluded that the C&W program did not constitute a debt arrangement." "The C&W decision reversing the Vermont Service Center and ordering that the petitions be approved rejects the argument that this structure constitutes a debt arrangement," the petitioner continues.

The petitioner misreads the decisions. The Vermont Service Center's statement regarding a "good faith commitment on a debt agreement" was a reference to a comment in the Federal Register from someone suggesting that the Service "should state in the regulations that a good faith commitment on a debt agreement, *which is secured by the alien entrepreneur's assets*, should suffice to meet the requirement that the alien entrepreneur has, in good faith, substantially met the capital investment requirement..." (emphasis added). In other words, the "debt agreement" referred to by the Vermont Service Center was the promissory note executed by the *petitioner*, who had agreed to make cash payments to the partnership; as such, the "debt" at issue was the petitioner's debt to the partnership, not the partnership's subsequent debt to the petitioner. Neither the center decision nor the AAU decision specifically considered whether the investment structure at issue involved a prohibited debt arrangement (i.e., loan) as is at issue here. Neither decision made reference to a sell option.

The petitioner points to another program, which he calls the "Pardini/Tony Roma program." According to the petitioner's counsel, the California Service Center stated, in a notice of intent to deny, that the effect of the partnership arrangement appeared to be "a series of loans called investments made by the Limited Partners, the foreign investors, to the General Partner who is to be repaid by the General Partners at 10% interest." Brief at 54. Counsel claims that, in his response, he set forth the AAU decision in C&W; "[t]he AAU's rejection of the debt arrangement argument proved persuasive to the California Service Center, which in turn rejected

[17]More precisely, the AAU finds that the AELP plan contains, as one of its many features, a loan of $290,000. This amount of $290,000 cannot be considered an "investment."

the 'debt' argument and approved the Pardini/Tony Roma investor petitions."

As noted above, the AAU's C&W decision did not address the issue of loans extended by the limited partners to the partnership. Therefore, the California Service Center would have been in error if it had relied on the C&W decision to conclude that the Tony Roma plan did not involve an impermissible debt arrangement. Moreover, the C&W decision was unpublished and, even if it were relevant to Tony Roma or to this case, would not have any binding precedential value. Furthermore, even if the Service has, in the past, approved petitions that contained redemption agreements, these approvals were in error because the Service now recognizes that such agreements are in fact debt arrangements.

> The petitioner also refers to an internal Service memorandum from October 20, 1997, in which appears the following statement:
>
> On the other hand, absent evidence to the contrary, where the agreement does not specifically grant the investor the option to sell or the new commercial enterprise to buy out the investment before the balloon payment is due, an adjudicator may not deny the petition based on a finding that the investor will not exercise a sell (or the new commercial enterprise a buy-out) option before the due date on the balloon payment.

This statement makes no sense and certainly does not support the petitioner's contentions. The petitioner characterizes this memorandum as "all-important"; far from being "all-important," this memorandum was meant only to provide general policy statements, not to analyze specific fact patterns.[18]

As far as the petitioner's criticism that the Texas Service Center's decision in this case failed to mention, distinguish, or explain away the above prior decisions and OGC opinions, it is not clear why the center director would reference them at all. Neither of the above decisions had any precedential value, and neither case originated from the Texas Service Center. OGC memoranda, as counsel himself stated after oral argument, are merely opinions. OGC is not an adjudicative body and is in the position only of being an advisor; as such, adjudicators are not bound by OGC recommendations. *See* 8 C.F.R. § 103.1(b)(1).

Because the petitioner here has entered into an agreement to pay $290,000 in exchange for a promise that he can receive the $290,000 back six months later, he has in effect entered into a debt arrangement as prohibited by 8 C.F.R. § 204.6(e).[19] The $290,000 cannot be considered to have been properly "invested" and is not at risk.

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[18]Furthermore, as mentioned earlier, this memorandum was superseded by another memorandum less than five months later.

[19]Again, this is assuming that the partnership agreement is the controlling document. If the investment document executed by this petitioner is controlling, then the money must be returned immediately and not after six months.

Cash reserves

The definitions section and section 4.04 of the original partnership agreement state that the general partner may deposit portions of the limited partners' capital contributions, designated as "reserve funds," in escrow or sub-escrow accounts. According to section 4.04.A(i) of the agreement, the banks holding these accounts shall invest the funds "in securities or other financial instruments and obligations in amounts sufficient to satisfy the requirements of **Section 8.05**," (emphasis in original). Section 4.04.B adds that the general partner "shall deposit with the Banks from the Initial Cash Payments sufficient Reserve Funds to satisfy the Partnership obligations under **Section 8.05** and to defray such costs and expenses of the Partnership as determined by the General Partner," (emphasis in original), Section 8.05 of the partnership agreement is entitled "Limited Partner Sell Option" and sets forth the timing and price of the sell option.

Section 4.03.B explains that after all the requirements of section 4.04.B are satisfied, any funds remaining from the initial cash payments and all subsequent capital contributions may be used to meet the obligations of the Partnership, as determined by the general partner in its sole discretion, with any excess to be used in the business of the Partnership.

In other words, pursuant to the above sections of the original partnership agreement, the general partner would be obligated to deposit sufficient portions of the initial $120,000 and/or the remaining $380,000 into the reserve funds such that the deposits and their earnings (from securities or other financial instruments) would enable the Partnership to fulfill its own obligations to buy back Partnership interests. The creation and maintenance of these reserve funds take priority over any other use of the capital contributions. Under these terms, any leftover money would be used for other Partnership obligations, and whatever was left thereafter would then be used for business activities. As the director stated in his decision, these reserve funds are, by agreement, not available for purposes of job creation and therefore cannot be considered capital placed at risk for the purpose of generating a return on the capital being placed at risk.

In his brief, the petitioner claims, "It is estimated in the business plans of AEP [the general partner] that no more than 10% of the total amount invested will ever be placed in bank accounts as reserves." The petitioner argues that since the sell-option price is $290,000, the initial payment of $120,000 and the installment payments totalling $90,000 would never become the subject of reserve accounts because they would yield an insufficient amount ($210,000) to cover the sell-option price. As such, these payments would be able to be used fully by the Partnership. Furthermore, the petitioner points out that if all of the limited partners' initial contributions and annual payments had been withheld as cash reserves, the subsidiary credit corporation could not have extended the

loans that it has.[20]

First, the partnership agreement states that the reserve funds are supposed to be invested in securities and other financial instruments, so the amount withheld from the capital contributions would not necessarily have to be $290,000. Second, the reserve provisions do not say that the reserves deducted from the contributions of a limited partner must be used to pay the sell-option price to that same limited partner; reserves drawn from later partners could conceivably be used to help pay the sell-option price to earlier partners.

Third, the reserve provisions probably have more significance as far as the final balloon payment of $290,000 than with respect to the initial payments. This final payment might have to be returned to the limited partner within six months, and the Partnership has a contractual obligation under sections 4.04.A(i) and 4.04.B to reserve sufficient funds to meet its redemption obligation of $290,000.[21] This is assuming, of course, that the partnership agreement is controlling; if the investment agreement executed by the petitioner is controlling, the money would be returned immediately instead of six months later.

In his brief, the petitioner states that in 1992 a Service official had delivered to counsel a model EB-5 investor petition that had been approved; at oral argument, counsel added that he was assured that if he followed this model petition, his petitions would also be approved. According to the petitioner, the one million dollars in capital invested in that case "would create reserves for inventory, working capital, expansion, and other partnership expenses, in the sum of *$450,000*. Thus, the model petition established that $450,000 of the $1,000,000 to be invested, or 45%, would be set aside as bank reserves."

The record does not contain a copy of this "model petition," and the AAU cannot ascertain whether the cash reserves in that case were mandatory or inadvertent, temporary or long-term. The opinions of one Service official, moreover, cannot work to remove from the AAU's jurisdiction the authority to review individual cases. *See* 8 C.F.R. § 103.1(f)(3)(iii), The Service does not pre-adjudicate investor petitions;[22] each petition must be adjudicated on its own merits. The fact that a particular petition (which did not result in a precedent decision) was considered qualifying in 1992, when the Service was less experienced with these types of cases, has no bearing

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[20]The credit company has only extended four loans to date, totalling $1,361,000. Capital contributions of $500,000 from the 95 previously-approved petitioners would yield $47.5 million available for loans.

[21]Even if, after six years, the petitioner elected to remain in the Partnership instead of exercising his redemption option, the reserve provisions would still preclude the capital from being placed at risk during the two-year conditional period, as required by the regulations.

[22]Cf. 8 C.F.R. § 214.2(l)(2)(ii) regarding non-immigrant L-1 blanket petitions.

on whether the reserve provisions in question here should also be considered qualifying.

Counsel explains in his brief on behalf of the petitioner:

> It was discovered by AELP that the Limited Partnership Agreement may be interpreted to require the creation of reserves in order to enable the Partnership to perform its obligation to pay the sell-option price to investors who exercised the sell-option obligations. It was never the intention of the Partnership to require the maintenance of reserves for this purpose.

Therefore, he states, pursuant to Stage I amendments the reserve provisions have since been eliminated.

The plain language of section 4.04.B of the original partnership agreement, however, clearly states that the general partner "shall" deposit sufficient reserves for the purpose of enabling the Partnership to meet its obligations under the sell-option agreement; the reference to the section pertaining to the sell option is even in bold face. It is difficult to imagine what the intent of this provision could be other than to require the creation and maintenance of reserves for such purpose. The assertion that the deletion of the reserve provisions is a Stage I amendment is not well taken; this revision does not conform the partnership agreement to the investment agreement executed by the petitioner and is a material change in position from the original partnership agreement. It is more in the nature of an unacceptable Stage II amendment.[23] (See earlier discussion of revisions to the partnership agreement.) Even if the issue of cash reserves were the sole ground for denial, the elimination of the cash-reserve requirement could not form the basis of an approval of *this* petition.

Fair market value of promissory note, schedule of payments

As stated in 8 C.F.R. § 204.6(e), **all** capital must be valued at fair market value in United States dollars. Counsel claims that the petitioner has made a capital contribution of $500,000 because he has executed a promissory note for $500,000. One issue to be examined when determining the fair market value of a promissory note is whether it is adequately secured.

According to the Secured Promissory Note executed by the petitioner on October 14, 1997, the obligation of the petitioner to make payments is secured by the petitioner's personal assets, "which are identified in the Attachment hereto." The promissory note does not include any document entitled "Attachment," although the record does contain a Summary of Bank Account Balances. This summary does not specify that the bank

[23]The investment agreement is silent as to cash reserves.

accounts listed are securing the note.

The summary and accompanying bank statements verify that the petitioner's accounts at Sumitomo Bank in Japan contained a total of $42,376.70 as of October 3, 1997; the petitioner's savings accounts at Sanwa Bank in Japan contained a total of $500,558.60 as of October 6, 1997; the petitioner's checking account at Sanwa Bank in California contained $70,985.80 as of October 10, 1997; and the petitioner's account at South Bay Bank in California contained $51,500 as of October 14, 1997. The Summary states that these accounts represent a total of $665,421.10 in funds.[24]

Assuming, arguendo, that the bank accounts do constitute the security for the promissory note, the petitioner has not demonstrated how AELP could reach the funds in the overseas accounts if the petitioner were to default, and it is not clear what expenses and effort would be involved. In the absence of such information, and in the absence of any details regarding the laws of Japan and the enforceability, by U.S. entities, of security interests taken in Japanese bank accounts, the petitioner has failed to establish that the security interest in the foreign accounts has any value.

More importantly, funds in bank accounts can easily be dissipated. As none of the above accounts is, for example, an escrow account or trust account in favor of AELP, no guarantee exists that the money contained in the accounts would remain there for the entire six years over which the petitioner would be obligated to make payments on the promissory note. For this reason, too, the petitioner has failed to show that his promissory note is adequately secured.

The fair market value of a promissory note also depends on the terms of the note itself. The petitioner contends that the promissory note at issue here is for $500,000, not $380,000; he urges the Service not to view his contribution as an initial payment of $120,000, plus annual payments totalling $90,000, plus a balloon of $290,000. The petitioner states that the regulations allow him either to have already invested or to be in the process of investing the requisite amount of capital. Therefore, the petitioner could either pay all $500,000 now or pay it over time. The regulations do not require that a petitioner pay extra to compensate for the fact that money paid now is worth more than money paid later, he argues. The petitioner points out that, at the time an alien investor seeks to remove the conditions of his permanent resident status, he need only demonstrate that he has "substantially" complied with the investment requirement. The petitioner main-

[24]It should be noted that the bank balances are for completely different dates, and it is not known if money was transferred among the various accounts and some of the funds double-counted. The petitioner did not provide transactions histories, and only one bank statement specifies the date on which the account was opened.

tains that by delivering the executed promissory note for the full $500,000, he has already made the full investment, and the schedule of payments is irrelevant.

The petitioner has failed to demonstrate that his promissory note, if it is to be considered capital, has a fair market value equal to its face value of $500,000. The question to be asked is what a third party would pay for the petitioner's note. In the real business world, promissory notes, such as mortgages, are regularly sold and are regularly discounted; present value is always relevant. The petitioner has submitted no evidence whatsoever as to the fair market value of his promise to finish paying $500,000 over six years.[25] In fact, applying standard formulae for computing the fair market value of annuities and future payments, the present value of five annual payments of $18,000 plus a payment due in six years of $290,000 plus a completed payment of $120,000 would be approximately $375,000 instead of $500,000.[26]

Under certain circumstances, a promissory note that does not itself constitute capital could instead constitute evidence that the petitioner is "in the process of investing" other capital, such as cash. In that situation, 8 C.F.R. § 216.6(c)(1)(ii) requires that a petitioner substantially complete his payments on the note prior to the end of the two-year conditional period. In the present case, however, the promissory note is not evidence that the petitioner is in the process of investing $500,000 of cash. As discussed earlier, the five $18,000 annual payments are covered by the guaranteed annual distributions. The $290,000 balloon payment is not due until well after the two-year period.

In administering this program, the Service has a responsibility to ensure that the requisite amount of money is actually paid by the petitioners. Over the years, the Service has observed that the terms of promissory notes have grown progressively longer; AELP, for example, started with due dates of four and five years, while the petitioner's payment plan, a more recent AELP development, involves six years. The schedule of payments under a promissory note, whether the note is used as capital or as evidence of a

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[25]As noted earlier, it is not actually clear that the petitioner is in fact obligated to complete all of his payments prior to exercising his sell option. If the petitioner can avoid making the last payment of $290,000 by simply exercising his sell option at the time the payment is due, any purchaser of the note could not count on receiving this last payment and would further discount the value of the note. In addition, as discussed earlier, section 2.C of the investment agreement provides that the petitioner is not obligated to make any further payments on the note in the event of the Partnership's bankruptcy (voluntary or involuntary) or failure to make any of its own payments; this further reduces the value of the promissory note to a third-party purchaser.

[26]As discussed above, the note in this case would be further discounted for other reasons, such as the lack of adequate security.

commitment to invest, is relevant to the issue of whether a petitioner has, in good faith, committed the requisite amount of his personal funds. It is also relevant to the issue of the amount of funds at risk and available to the job-creating enterprise(s). Therefore, at a minimum, nearly all of the money due under a promissory note must be payable within two years, without provisions for extensions.[27] To allow otherwise would permit the admission of aliens who, by the terms of their investment plans, would be ineligible for removal of the conditions of their permanent resident status. *See* 8 C.F.R. § 216.6(c)(1)(iii).

If the instant petition were to be approved, the petitioner would have paid at most $123,600 of his own funds at the time he sought removal of the conditions of his permanent resident status.[28] This is far short of the requisite $500,000 and hardly evidences a good-faith commitment of funds. As noted above, the petitioner has also failed to show that the promissory note is adequately secured and that it otherwise has an adequate fair market value.

Source of funds

8 C.F.R. § 204.6(j) states, in pertinent part, that:

> (3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:
>
> (i) Foreign business registration records;
>
> (ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;
>
> (iii) Evidence identifying any other source(s) of capital; or
>
> (iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

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[27]The petitioner must still show that the promissory note is adequately secured and that the promissory note has an adequate fair market value.

[28]§§ 216A(c)(1) and (d)(2) of the Act provide that such a petition must be filed within the 90-day period preceding the second anniversary of a petitioner's admission as a conditional permanent resident.

While the record contains a letter from Wells Fargo Bank dated October 14, 1997, acknowledging the receipt of $120,000 and advising the petitioner that the funds had been deposited into a custody account, the record does not reveal from where these funds originated. It is not known if the money came from the petitioner's overseas accounts, from his U.S. accounts, or from some other source. As the petitioner has not documented the path of the funds, such as by wire-transfer records, the petitioner has failed to meet his burden of establishing that the initial $120,000 were his own funds. *See Matter of Soffici*, 22 I&N Dec. 158 (Comm. 1998).

The petitioner has also failed to document the source of the hundreds of thousands of dollars in his bank accounts. The petitioner is 30 years old and, according to counsel, began his "entrepreneurial activities" in May 1993. The petitioner is said to be the president of a company that imports and sells vintage Levis jeans in Japan.

The only evidence of earnings contained in the record consists of two documents from the Director of Nerima Higasi Taxation Office. These documents indicate that, for the taxable year of June 3, 1996, to May 31, 1997, South Bay Trading Japan, Inc., declared Y12,674,887 in corporate income and paid Y3,992,100 in taxes. Counsel states that, applying an exchange rate of 122 Japanese yen to one U.S. dollar, the company's taxable income was $103,892.52 for this period. After subtracting taxes paid, however, the net income of South Bay Trading was approximately $71,170.

Furthermore, this figure says nothing about the *petitioner's* level of income that year, and the petitioner has not submitted any documentation about his level of income during other years. Assuming that the petitioner had taken all of South Bay's net income for himself, and assuming that the petitioner's business activities had been just as successful in the previous three years, and assuming that the petitioner had had no living expenses, he could have saved no more than $300,000; counsel claims that the petitioner's bank accounts contain over $650,000. Therefore, the petitioner has failed to meet the requirements of 8 C.F.R. § 204.6(j)(3).

Estoppel and reliance considerations

In his brief on behalf of the petitioner, counsel refers to instances in which he was supposedly guaranteed that his clients' petitions would be approved. Counsel states that in 1992 he was given a model petition and advised that if he patterned his investment structures in the same way, his clients' petitions would be approved.

In the fall of 1996, counsel met with "the Senior INS representative in charge of immigrant investor programs" and this person

> expressly approved the $120,000 initial payment option, the six year schedule of payments in the sell-option or redemption agreement available after all of the payments

> have been made. The only limitation placed upon any of these provisions was that the redemption agreement could not be exercised until all of the payments had been made by the investor.

Brief at 46. Counsel states, at page 14, "Thereafter, INS kept its word. Approximately 95 petitions of AELP were approved by INS including over 50 petitions involving the initial payment option of $120,000." The opinions of a single Service official, however, are not binding, and as stated earlier, no Service officer has the authority to pre-adjudicate an immigrant-investor petition.

Counsel states that he has submitted 11 different partnership plans to the Service and that they are all identical; since the first petitions were approved, the Service is bound to approve the petition at issue here. Counsel further claims that on more than 30 occasions, he had been promised that no "changes" would be made except by formal rulemaking. Counsel is saying, in effect, that the approval of his programs is nonreviewable except upon a writing of formal regulations. Opinions purportedly expressed by a few Service officials cannot remove the AAU's regulatory authority to review these cases. To say that an agency's knowledge cannot grow, and that an agency is prohibited from benefiting from its experience, is unreasonable.

The petitioner argues that the OGC opinion of December 19, 1997, constitutes a rule change that the Service is now retroactively applying in violation of the Administrative Procedure Act ("APA"). Brief at 4-7, 114-43; Second Supplemental Brief at 5-12. This OGC opinion, however, is not a "rule." Under the APA, a rule is a binding legal principle "designed to implement, interpret or prescribe law or policy." 5 U.S.C. § 551. As noted in the OGC opinion itself, the opinion in no way modifies existing law, but is intended merely to provide guidance to the Service in understanding many factual issues that have arisen over the years with respect to immigrant-investor petitions. Providing this type of guidance is the very mission of OGC, as specifically provided at 8 C.F.R. § 100.2(a)(1) and 103.1(b)(1). These regulations do not delegate any authority to OGC to establish binding legal principles or to exercise any other rulemaking power. Neither the AAU nor other Service adjudicators, therefore, are bound to follow the OGC opinion of December 19, 1997. The AAU's decision in this case is based entirely on the application of longstanding statutory and regulatory law to the facts presented in this petition.

The petitioner incorrectly argues that the Service should be estopped from finding that his investment plan is inconsistent with § 203(b)(5) of the Act and the relevant regulations. The Supreme Court has never upheld a claim that a Government agency may be estopped from deciding a case before it, such as this case, in accordance with the law. *See Office of Personnel Management v. Richmond*, 496 U.S. 414, 422 (1990).

Furthermore, even if estoppel were applicable to the Service under these circumstances, the petitioner has completely failed to establish the requisite elements therefor. For example, the petitioner has shown no affirmative misconduct on the part of the Service.

Moreover, the petitioner has not shown that he has detrimentally relied on any prior representation by a Service official. First, no basis exists for a claim that the petitioner or his counsel "reasonably" or "justifiably" believed that informal discussions between counsel and any Service officer were an acceptable substitute for following the normal rules applicable to the filing and adjudication of investor-visa petitions. It is basic immigration law that the only way to obtain a determination on eligibility for immigrant-investor classification is to file a petition with the Service. *See* section 204(a)(1)(F); 8 C.F.R. § 2.1 and 204.6(a), Furthermore, the Service may approve a petition only if the Service makes a formal adjudication "[a]fter an investigation of the facts in each case," that the alien is eligible for the classification sought, § 204(b) of the Act.

In addition, even if the petitioner were able to establish reasonable reliance, he has not shown that he has done so to his detriment. For example, according to the investment plan, the petitioner is only obligated to pay the required investment upon the approval of his visa petition. Brief at 29.

THE PETITIONER HAS NOT ESTABLISHED A NEW COMMERCIAL ENTERPRISE

8 C.F.R. § 204.6(h) states that the establishment of a new commercial enterprise may consist of:

> (1) The creation of an original business;
>
> (2) The purchase of an existing business and simultaneous or subsequent restructuring or reorganization such that a new commercial enterprise results; or
>
> (3) The expansion of an existing business through the investment of the required amount, so that a substantial change in the net worth or number of employees results from the investment of capital. Substantial change means a 40 percent increase either in the net worth, or in the number of employees, so that the new net worth, or number of employees amounts to at least 140 percent of the pre-expansion net worth or number of employees. Establishment of a new commercial enterprise in this manner does not exempt the petitioner from the requirements of 8 C.F.R. § 204.6(j)(2) and (3) relating to the required amount of capital investment and the creation of full-time employment for ten qualifying employees. In the case of a capital investment in a troubled business, employment creation may meet the criteria set forth in 8 C.F.R. § 204.6(j)(4)(ii).

8 C.F.R. § 204.6(e) states that:

> *Troubled business* means a business that has been in existence for at least two years.

has incurred a net loss for accounting purposes (determined on the basis of generally accepted accounting principles) during the twelve- or twenty-four month period prior to the priority date on the alien entrepreneur's Form I-526, and the loss for such period is at least equal to twenty percent of the troubled business's net worth prior to such loss. For purposes of determining whether or not the troubled business has been in existence for two years, successors in interest to the troubled business will be deemed to have been in existence for the same period of time as the business they succeeded.

According to the plain language of § 203(b)(5)(A)(i) of the Act, a petitioner must show that he is seeking to enter the U.S. for the purpose of engaging in a new commercial enterprise that **he** has established. As counsel maintains, the new commercial enterprise at issue here is AELP. AELP, however, was established on March 25, 1996. The petitioner executed the various partnership documents on October 14, 1997. The petitioner did not indicate, at Part 4 of the Form I-526, in what way he was creating a new enterprise.

While AELP is a new commercial enterprise, in that it was formed after November 29, 1990, the petitioner had no hand in its creation and was not present at its inception.[29] Therefore, the petitioner must demonstrate that he will restructure or reorganize AELP to the degree that a new business will result, or he must demonstrate that he will expand AELP's net worth or number of employees by 40 percent, or he must demonstrate that AELP is a troubled business as defined above.

AELP was an ongoing business prior to the petitioner executing the investment agreement, and it intends to continue in its current form; therefore, the petitioner has not established the requisite restructuring or reorganization. As the petitioner has noted on numerous occasions, 95 investors have previously been approved with respect to AELP. Taking his claims at face value, and assuming that all 95 investors have made capital investments of $500,000, it is not possible for this petitioner to expand AELP by 40 percent with a single "investment" of $500,000. Finally, the petitioner has not submitted evidence to show that AELP has suffered the degree of loss in net worth specified by 8 C.F.R. § 204.6(e) to qualify as a troubled business; in addition, AELP was not in existence for at least two years prior to the time the petitioner signed the investment agreement.

The AAU recognizes that the Service has previously approved petitions involving plans in which limited partners joined partnerships over varying periods of time. Experience has shown, however, that some of these pool-

[29]It could perhaps be argued that the date of filing of the Certificate of Limited Partnership was not the date of AELP's creation, that AELP is still in the process of being created, and that therefore the petitioner is part of the original creation of AELP. If so, the petition has been filed prematurely; the Act requires that the petitioner "has established" the commercial enterprise already. Accomplishment of a business's purposes would be too speculative if it was based on successfully attracting unidentified future investors.

ing arrangements are being used to circumvent the establishment requirement set forth by Congress.

The petitioner has failed to show that **he** has established a new commercial enterprise, as required by § 203(b)(5)(A)(i) of the Act.

THE PLAN DOES NOT MEET THE EMPLOYMENT-CREATION REQUIREMENT

8 C.F.R. § 204.6(j)(4)(i) states:

> To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:
>
> (A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
>
> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

8 C.F.R. § 204.6(g) deals with multiple investors and states, in pertinent part:

> (1) The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien entrepreneur by more than one investor, provided each petitioning investor has invested or is actively in the process of investing the required amount for the area in which the new commercial enterprise is principally doing business, and provided each individual investment results in the creation of at least ten full-time employees.
>
> (2) The total number of full-time positions created for qualifying employees shall be allocated solely to those alien entrepreneurs who have used the establishment of the new commercial enterprise as the basis of a petition on Form I-526. No allocation need be made among persons not seeking classification under section 203(b)(5) of the Act or among non-natural persons, either foreign or domestic. The Service shall recognize any reasonable agreement made among the alien entrepreneurs in regard to the identification and allocation of such qualifying positions.

As discussed earlier, the petitioner has failed to demonstrate that the subsidiary credit corporation has extended loans in the past to export-related businesses located within the geographical limitation of the regional center. Similarly, the credit corporation's loan prospects do not appear to involve businesses within the geographical limitation. No reason exists to believe that this petitioner's money will be lent to businesses within the geographical area. Therefore, he must establish direct employment creation.

The petitioner has failed to show that AELP has hired or will hire a sufficient number of employees to allocate 10 full-time positions to each of the 95 previously-approved petitioners as well as to this petitioner and the remaining 64 petitioners whose cases have not been decided.

CONCLUSION

In his brief, counsel states, "INS is supposed to *grant* immigrant investor petitions, not to *deny* them. INS is to interpret the laws and regulations liberally and generously so as to achieve [this] Congressional purpose." He presents statistics showing that, of the total number of visas made available, only six percent has been used. The fact that counsel considers this category to be under-utilized is irrelevant. The alien-entrepreneur classification is for a special kind of person, and it is not surprising that, notwithstanding the random number fixed by Congress, few people have both the financial means and the entrepreneurial spirit to apply. The Service will not eviscerate the meaning of the regulations or the essence of the law simply to "fill up" the numbers. The measure of success or failure of the EB-5 program is not the number of petitions granted; rather, it is the extent to which proper compliance is achieved and genuine investments are made.

Counsel continues, "Failing to comply reflects adversely upon INS as having failed to properly communicate to those attempting to comply, that which is necessary to comply." The foregoing decision should offer some guidance as to what is necessary to comply.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the petition is denied.

ORDER: The decision of the director is affirmed. The petition is denied.

In re HSIUNG, Petitioner

In Visa Petition Proceedings

[redacted] (b)(6)

Decided by the Associate Commissioner, Examinations, July 31, 1998.

(1) A promissory note secured by assets owned by a petitioner can constitute capital under 8 C.F.R. § 204.6(e) if: the assets are specifically identified as securing the note; the security interests in the note are perfected in the jurisdiction in which the assets are located; and the assets are fully amenable to seizure by a U.S. note holder.

(2) When determining the fair market value of a promissory note being used as capital under 8 C.F.R. § 204.6(e), factors such as the fair market value of the assets securing the note, the extent to which the assets are amenable to seizure, and the present value of the note should be considered.

(3) Whether a petitioner uses a promissory note as capital under 8 C.F.R. § 204.6(e) or as evidence of a commitment to invest cash, he must show that he has placed his assets at risk. In establishing that a sufficient amount of his assets are at risk, a petitioner must demonstrate, among other things, that the assets securing the note are his, that the security interests are perfected, that the assets are amenable to seizure, and that the assets have an adequate fair market value.

(4) A petitioner engaging in the reorganization or restructuring of a pre-existing business may not cause a net loss of employment.

ON BEHALF OF PETITIONER: ROBERT LUBIN
8229 BOONE BOULEVARD
SUITE 610
VIENNA, VA 22182

DISCUSSION

The preference visa petition was denied by the Director, Nebraska Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The petitioner has chosen not to respond. The decision of the director is affirmed.

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5), The petitioner is one of 14 "investors" in Imedix, Inc. Imedix was established on June 16, 1997, for the purpose of structuring, purchas-

ing, reorganizing, and upgrading health-care facilities in targeted areas of the United States. No clinics have yet been acquired, but the petitioner estimates that 27 clinics will employ approximately 194 employees.

The director determined that the petitioner had failed to make an active, at-risk investment in that the project was not even in the start-up phase; Imedix had not conducted any sort of business or financial analysis and had not engaged in any discussions with health-care facilities, state health officials, or real-estate agents, for example. The director also found that the required amount of capital had not been placed at risk and that the petitioner had failed to show that he was investing his own funds, obtained through lawful means. The director was further unable to ascertain a reasonable basis for Imedix's determination that it would create 194 positions, as this estimate was given without reference to medical needs of specific communities to be served.

After review of the evidence contained in the record, the decision of the director is found to be correct. Beyond the director's decision, other issues must be addressed. The affirmance of the director's decision is based not only on the director's findings but also on the findings discussed below.

The first issues concern the petitioner's payment agreement and his claimed assets abroad. As stated by the director, the petitioner agreed, pursuant to this payment agreement, to make an initial payment of $50,000, another payment within 30 days after the petition was approved, a payment of $200,000 one year after entry into the United States, and a final payment of $200,000 prior to the removal of the conditions of permanent resident status. The petitioner agreed to secure the principal sum of $500,000 by an assignment of his property having a net fair market value of $500,000.

The petitioner's claimed investment is in the form of a promissory note. A promissory note can constitute "capital" under 8 C.F.R. § 204.6(e) if the note is secured by assets owned by the petitioner. These assets must be specifically identified as securing the note. Furthermore, any security interest must be perfected to the extent provided for by the jurisdiction in which the asset is located,[1] and the asset must be fully amenable to seizure by a U.S. note holder.[2]

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[1]This office notes that the Office of General Counsel ("OGC") has previously stated its opinion that the regulations do not require that indebtedness meet the requirements for secured transactions under Article 9 of the Uniform Commercial Code ("UCC"); similarly, OGC has stated that the regulations do not require that the lender perfect his security interest. Memorandum from Paul W. Virtue to Louis D. Crocetti, Jr. (June 27, 1995), *reprinted in* 72 INTERP. REL. 1209 (September 1, 1995), While the regulations do not specifically require that a promissory note be secured under the UCC, merely "identifying" assets as securing a loan, without perfecting the security interest, is not meaningful since the note holder cannot be assured that the identified assets will remain available for seizure in the event of default.

[2]See below for a discussion concerning the seizure of assets.

The petitioner has submitted no evidence that a security interest has been recorded in any particular property, and the promissory note does not even identify what assets are securing it. In addition, as the director stated in her decision, the petitioner has not established that the assets he claims to own in Taiwan are in fact his. The bank accounts at the Bank of Taiwan, containing NT$5,736,012 (US$199,613 as of September 3, 1997, according to counsel), belong to Dustin Hsiung; the petitioner has not demonstrated that he and Dustin Hsiung are the same person. The real estate in Taiwan, appraised at NT$11,167,843 (US$388,640 as of September 3, 1997), belongs to Ping-Hsiu Liu; the petitioner has not demonstrated that he and Ping-Hsiu Liu are the same person. Therefore, even if these assets were properly securing the note, the note does not meet the definition of "capital" because the petitioner has not shown that it is secured by his assets.

Assuming arguendo that the note at issue here did constitute "capital," the regulations at 8 C.F.R. § 204.6(e) further provide that all capital must be valued at fair market value in United States dollars. Whether a promissory note has a fair market value equivalent to its face value depends on many factors, including the value of the assets securing the note. The Taiwanese real estate, appraised at $388,640, is subject to a mortgage of NT$7,000,000 (approximately US$201,180). The net value of this real estate, then, is approximately $187,460. Assuming that the petitioner has made his initial payment of $50,000, assuming that the real estate and the money in the bank accounts (which contain $199,613) are his, and assuming that these assets do secure the promissory note, the net result is that a $450,000 obligation is being secured by only $387,073 in assets.[3] This is not sufficient to meet the fair-market-value requirement of the regulations.

The fair market value of a promissory note also depends on the amenability of the assets securing the note to seizure. Both the bank account and real estate are located abroad. In order for foreign assets, including real estate, to be considered as acceptable security, a petitioner must establish that the laws of the foreign country in which the assets are located would recognize, and permit execution of, a judgment of a court of the United States or of any State with respect to the foreign assets.[4] In the alternative, the petitioner must establish that the courts of that foreign country would themselves recognize and enforce the promissory note absent the judgment of an American court. Otherwise, the promissory note would clearly not have the value attributed to it by the petitioner. The petitioner here has not

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[3]The current exchange rate is closer to NT$34.27 = US$1. WASHINGTON POST, July 21, 1998, at C10. At this exchange rate, the net value of the assets is only US$288,994.89.

[4]This, for example, could take the form of a transfer of ownership of the property to the creditor or it could take the form of a court-ordered liquidation and transfer of assets to the creditor.

presented any evidence as to Taiwanese law regarding the seizure of assets.

Even if assets can be reached under the laws of the applicable foreign country, considerable expense and effort would be involved in pursuing them. These factors would reduce the fair market value of a promissory note secured by foreign assets. It is not clear to what extent the value of the petitioner's promissory note should be reduced since the petitioner has not submitted any evidence as to the cost of enforcing a judgment against his purported property.

The fair market value of a promissory note further depends on its *present* value. *Matter of Izumii*, 22 I&N Dec. 169 (July 13, 1998), Money received today is worth more than money received tomorrow, and promissory notes are routinely discounted in recognition of this principle. A petitioner who bases his claim of investment on a promissory note must demonstrate that the promissory note has a fair market value equal to the amount of the investment. A petitioner cannot merely claim that his promissory note for $500,000 is worth $500,000, even if the note is properly secured with personal assets, amenable to seizure, of sufficient fair market value. This petitioner has not furnished evidence of the present value of his promissory note and has therefore failed to meet his burden.

To establish that the petitioner has invested, or is actively in the process of investing, he must show that he has placed the required amount of capital at risk.[5] 8 C.F.R. § 204.6(j)(2), The petitioner here has not shown that his assets are at risk. As discussed above, the petitioner has failed to demonstrate the following: that the bank accounts and real estate in Taiwan allegedly securing the note belong to him; that these assets are in fact securing the note; that any security interest in these assets has been perfected to the extent provided for under Taiwanese law; and that these assets are amenable to seizure. In addition, even if the petitioner had established ownership of these assets, he still has not shown that the requisite amount of money is at risk; he has failed to demonstrate that the assets in Taiwan have a total net fair market value of $500,000 (or $450,000 if he has already made his first payment of $50,000), and he has failed to allow for the estimated costs of seizing the assets should the need arise.

A further issue to be addressed concerns the petitioner's statement that Imedix plans to engage in "structuring, purchasing, reorganizing and upgrading health care facilities." Although the petitioner could argue that Imedix is the new commercial enterprise at issue here, the clinics Imedix claims it will purchase are pre-existing, ongoing businesses. Through his

[5]This applies regardless of whether the petitioner is claiming that his promissory note is itself capital or whether he claims that it is merely evidence that he is in the process of investing cash. An actual commitment does not exist if the petitioner's assets are not at risk. *See* 8 C.F.R. § 204.6(j)(2).

company's business activities, a petitioner cannot directly cause a net loss of employment. It is not known if the projected figure of "194" employees represents the maintenance of the former levels of employment at the unidentified clinics (in the case of troubled businesses), the addition of 10 new positions per investor, or an actual loss of employment.

ORDER: The decision of the director is affirmed. The petition is denied.

U.S. Department of Homeland Security
P.O. Box 852841
Mesquite, TX 75185-2841

U.S. Citizenship and Immigration Services

December 1, 2010

xxxxxx

(b)(6) [redacted]

Petition: I-526 (Alien Entrepreneur Petition)
Petitioner: xxxxx
Enterprise: xxxxxx Marina Group
File: xxxx

Notice of Decision

Upon consideration, it is ordered that your Immigrant Petition by Alien Entrepreneur (Form I-526) be denied for the following reason(s):

See Attachment

If you desire to appeal this decision, you may do so. Your notice of appeal must be filed within 33 days from the date of this notice. If no appeal is filed within the time allowed, this decision is final. Appeal in your case may be made to:

COMMISSIONER

(on Form I-290B). (A fee of $385.00 is required).

If an appeal is desired, the Notice of Appeal shall be executed and filed with this office, together with the required fee. A brief or other written statement in support of your appeal may be submitted with the Notice of Appeal.

Any questions which you may have will be answered by the local immigration office nearest your residence, or at the address shown in the heading to this letter.

Attachment

The record indicates that the petitioner seeks classification as an alien entrepreneur pursuant to § 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(5) based on an investment in a new commercial enterprise.

§ 203(b)(5)(A) of the Act 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).

8 C.F.R. 204.6(e) states, in pertinent part, that

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. . .

Commercial enterprise means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned. . .

Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

New means established after November 29, 1990.

8 C.F.R. 204.6(j) states, in pertinent part, that:

> (2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner 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. Such evidence may include, but need not be limited to:
>
> (i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;

(ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices; sales receipts; and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

(iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

(iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

(3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:

(i) Foreign business registration records;

(ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

(iii) Evidence identifying any other source(s) of capital; or

(iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

Title 8 Code of Federal Regulations section 204.6(j)(4) states, in pertinent part:

(i) General. To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:

(A) Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or

(B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

Title 8 Code of Federal Regulations Section 204.6(h) states, in pertinent part:

> The establishment of a new commercial enterprise may consist of:
>
> (1) The creation of an original business;
>
> (2) The purchase of an existing business and simultaneous or subsequent restructuring or reorganization such that a new commercial enterprise results; or
>
> (3) The expansion of an existing business through the investment of the required amount, so that a substantial change in the net worth or number of employees results from the investment of capital. Substantial change means a 40 percent increase either in the net worth, or in the number of employees, so that the new net worth, or number of employees amounts to at least 140 percent of the pre-expansion net worth or number of employees.

(b)(6)

Upon review of the petition, which was filed on July 17, 2006, it was determined that the evidence was insufficient to render a favorable decision. On January 16, 2007, this Service sent the petitioner a Request for Additional Evidence (RFE) asking for further evidence of the establishment of a new commercial enterprise, the investment, the lawful source of funds, and the job creation of the business. A response was subsequently received.

The chief issues to be determined are the following:

- Does the evidence establish that the petitioner established a new commercial enterprise?
- Does the evidence establish that the petitioner invested or was in the process of investing the required amount of capital in the new commercial enterprise?
- Does the evidence establish that the petitioner invested capital obtained through lawful means?
- Does the evidence establish that the petitioner met the job creation requirement?

NEW COMMERCIAL ENTERPRISE

The RFE noted that the enterprise in this case is the pre-existing marina business which the petitioner purchased in August of 2004. The RFE also asked the petitioner to provide evidence sufficient to demonstrate that the marina business is a new enterprise. The Service notes that the purchase of an existing business is not necessarily the creation of a new enterprise. Further evidence could have included proof that the business was created: 1) after November 29, 1990; 2) as a result of a reorganization or restructuring of an existing business; or 3) as a result of an expansion of the existing business by 40% in terms of net worth or employees. The response to the RFE does not appear to address this issue other than to provide an explanation that several additional entities were also created. The evidence submitted indicates that the petitioner is

successfully operating a substantial business; however it does not adequately demonstrate that a "new" commercial enterprise was established as per 8 CFR, 204.6 (h).

CAPITAL INVESTMENT

In regard to this issue, the evidence submitted fails to establish that the petitioner invested or was in the process of investing the required amount of capital ($1,000,000) in the new commercial enterprise as of the time of filing. It should be noted that although a petitioner may qualify by being "in the process" of investing, the full amount of capital must still be placed at risk.

(b)(6)

Counsel asserts that the evidence of these transactions establishes the investment, but if the Service finds otherwise, Counsel requests that the petitioner be considered as "in the process" of investing so that any perceived shortfall may be corrected during the period of conditional residence.

The Service notes that although the evidence is extensive and well-organized, it does not adequately demonstrate that the petitioner made the investment with his personal capital. The regulations as 8 CFR, 204.6 indicate that it is the petitioner who must place his capital at risk.

According to Matter of M-, 8 I&N Dec. 24 (BIA 1958; AG 1958), "It is an elementary rule that a corporation is a legal entity entirely separate and distinct from its stockholders, and this is true even though one person may own all or nearly all of the capital stock." See also Matter of Tessel, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980); Matter of Aphrodite Investments Limited, 17 I&N Dec. 530 (Comm. 1980). Thus, funds placed with the other entities by Hideaway Yacht Sales, Inc. do not constitute an investment of the petitioner's personal capital. Even though Counsel's letter maintains that the amounts referenced above were personally paid by the petitioner, the Service notes that they were paid by a separate corporation, and thus are not qualifying investments of the petitioner's personal capital.

(b)(4)

apparently made the transfers. The petitioner did not remove the funds, pay personal income taxes, and then invest the capital.

The regulations specifically state that an investment is a *contribution* of capital, and not simply a failure to remove money from the enterprise. The definition of "invest" in the regulations quoted above does not include the reinvestment of proceeds. In addition, 8 C.F.R. § 204.6(j)(2) lists the types of evidence required to demonstrate the necessary investment. The list does not include evidence of the reinvestment of the proceeds of the new enterprise. *See generally De Jong v. INS*, No. 6:94 CV 850 (E.D. Tex. Jan. 17, 1997); and *Matter of Izummi*, 22 I&N Dec. 169, 195 (Comm. 1998) for the propositions that the reinvestment of proceeds cannot be considered capital and that a petitioner's corporate earnings cannot be considered the earnings of the petitioner.

In addition, the tax returns provided for the entities failed to reflect contributions of capital by the petitioner in the amounts claimed. The evidence contains:

(b)(6)

LAWFUL SOURCE OF CAPITAL

The petitioner states that the source of the investment capital is Hideaway Yacht Sales. Tax returns indicate that the petitioner's businesses earn substantial funds. However, none of the tax returns reflect amounts of accumulated personal capital in the amount of $1,000,000. The path of the capital from the petitioner's personal assets to the new commercial enterprise has not been clearly established.

JOB CREATION

The Form I-526 states that the business had 27 full-time employees before the purchase of the business. Counsel's letter dated July 13, 2006, states that there were 21 full-time employees before the purchase. The response to the RFE now states that there were 11 full-time employees at the time of purchase. No explanation is given for these discrepancies. The petitioner submitted a payroll register for the second week in 2005, and Counsel's letter stating that it shows the 11 full-time employees at the time of the investment.

However, the Service notes that Counsel's letter dated July 13, 2006 states that the business was purchased in August of 2004. No employee records for that time period have been submitted, thus it is not clear exactly how many full-time employees existed at the marina business before the purchase. The Forms W-2 indicate that there were 18 people (besides the petitioner and any family members) earning wages reflective of at least 35 hours per week at minimum wage or above. Thus, whether there were 27, 21, or 11, the required 10 full-time jobs have not been shown to be created. Therefore, a business plan citing a reasonable methodology should have

been submitted.

A petitioner must establish eligibility at the time of filing. The petition may not be approved at a future date after the petitioner becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, a petitioner may not make a material change to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements.

In Matter of Caron International, I.D. 3085 (Comm. 1988) and Matter of Shaw, II I&N Dec. 277 (D.D. 1965), it was decided that the petitioner bears the burden of proof for the benefit sought. In addition, Section 291 of the Act, 8 U.S.C. 1361, states that the burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met such burden.

In view of the above, your Immigrant Petition by Alien Entrepreneur is hereby denied.

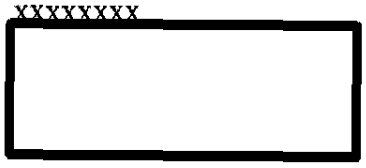
Sincerely,

Evelyn M. Upchurch, Director
Texas Service Center

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
Bureau of Citizenship and Immigration Services
Texas Service Center
Post Office Box 850965
Mesquite, Texas 75185-0965

Date:

xxxxxxxx



(b)(6)

Petition: I-526 (Alien Entrepreneur Petition)
Petitioner: xxxxxxx
Enterprise: xxxxCapital Corporation
File: xxxxx

Notice of Decision

Upon consideration, it is ordered that your Immigrant Petition by Alien Entrepreneur (Form I-526) be denied for the following reason(s):

See Attachment

If you desire to appeal this decision, you may do so. Your notice of appeal must be filed within 33 days from the date of this notice. If no appeal is filed within the time allowed, this decision is final. Appeal in your case may be made to:

COMMISSIONER

(on Form I-290B). (A fee of $385.00 is required).

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Attachment

The record indicates that the petitioner seeks classification as an alien entrepreneur pursuant to § 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(5) based on an investment in a new commercial enterprise.

§ 203(b)(5)(A) of the Act provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

> (i) which the alien has established,
>
> (ii) 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
>
> (iii) 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. . .

8 C.F.R. 204.6(e) states, in pertinent part, that

> *Capital* means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. . .
>
> *Commercial enterprise* means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned. . .
>
> *Invest* means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.
>
> *New* means established after November 29, 1990.

8 C.F.R. 204.6(j) states, in pertinent part, that:

> (2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner 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. Such evidence may include, but need not be limited to:

(i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;

(ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices; sales receipts; and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

(iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

(iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

(3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:

(i) Foreign business registration records;

(ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

(iii) Evidence identifying any other source(s) of capital; or

(iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

Title 8 Code of Federal Regulations section 204.6(j)(4) states, in pertinent part:

(i) *General.* To show that a new commercial enterprise will create not fewer than ten (10)

full-time positions for qualifying employees, the petition must be accompanied by:

> (A) Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
>
> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

Title 8 Code of Federal Regulations Section 204.6(h) states, in pertinent part:

> The establishment of a new commercial enterprise may consist of:
>
> (1) The creation of an original business;
>
> (2) The purchase of an existing business and simultaneous or subsequent restructuring or reorganization such that a new commercial enterprise results; or
>
> (3) The expansion of an existing business through the investment of the required amount, so that a substantial change in the net worth or number of employees results from the investment of capital. Substantial change means a 40 percent increase either in the net worth, or in the number of employees, so that the new net worth, or number of employees amounts to at least 140 percent of the pre-expansion net worth or number of employees.

The INS Administrative Appeals Office (AAO) recently published four precedent decisions that provide guidance and clarification of the current law. *See* Matter of Soffici, I.D. 3359 (Assoc. Comm., Examinations, June 30, 1998).; Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998); Matter of Ho, I.D. 3362 (Assoc. Comm., Examinations, July 31, 1998); and Matter of Hsiung, I.D. 3361 (Assoc. Comm., Examinations, July 31, 1998). Pursuant to 8 CFR 103.3(c), Bureau precedent decisions are binding on all Bureau employees in the administration of the Act. Consequently, the instant petition has been reviewed in accordance with these recent decisions.

The petition was filed on September 19, 2001, and after review it was determined that the evidence in the file was not sufficient to warrant an approval. A Request for Additional Evidence was then sent on March 7, 2003, requesting further evidence to demonstrate that the capital investment requirement had been met, that the capital was lawfully obtained, and that the job creation requirement had been met. The petitioner's response was received on June 6, 2003.

The chief issues remaining to be determined are the following:

1) Does the evidence establish that the petitioner invested or was in the process of investing the required amount of capital in the new commercial enterprise?

2) Does the evidence establish that the funds were lawfully obtained?

Capital Investment

In regard to this issue, the evidence submitted fails to establish that the petitioner invested or was in the process of investing the required amount of capital in the new commercial enterprise. The required amount of capital in this matter is

(b)(6)

The Service notes that loans from shareholders are not contributed capital. It should also be noted that the loan for the warehouse is secured by the property itself, and thus it may not be counted toward the required investment. The assumption of an existing loan which is secured by the assets of the new commercial enterprise is not a contribution of capital.

8 C.F.R. 204.6(e) states, in pertinent part, that

> *Capital* means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. . .
>
> *Invest* means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

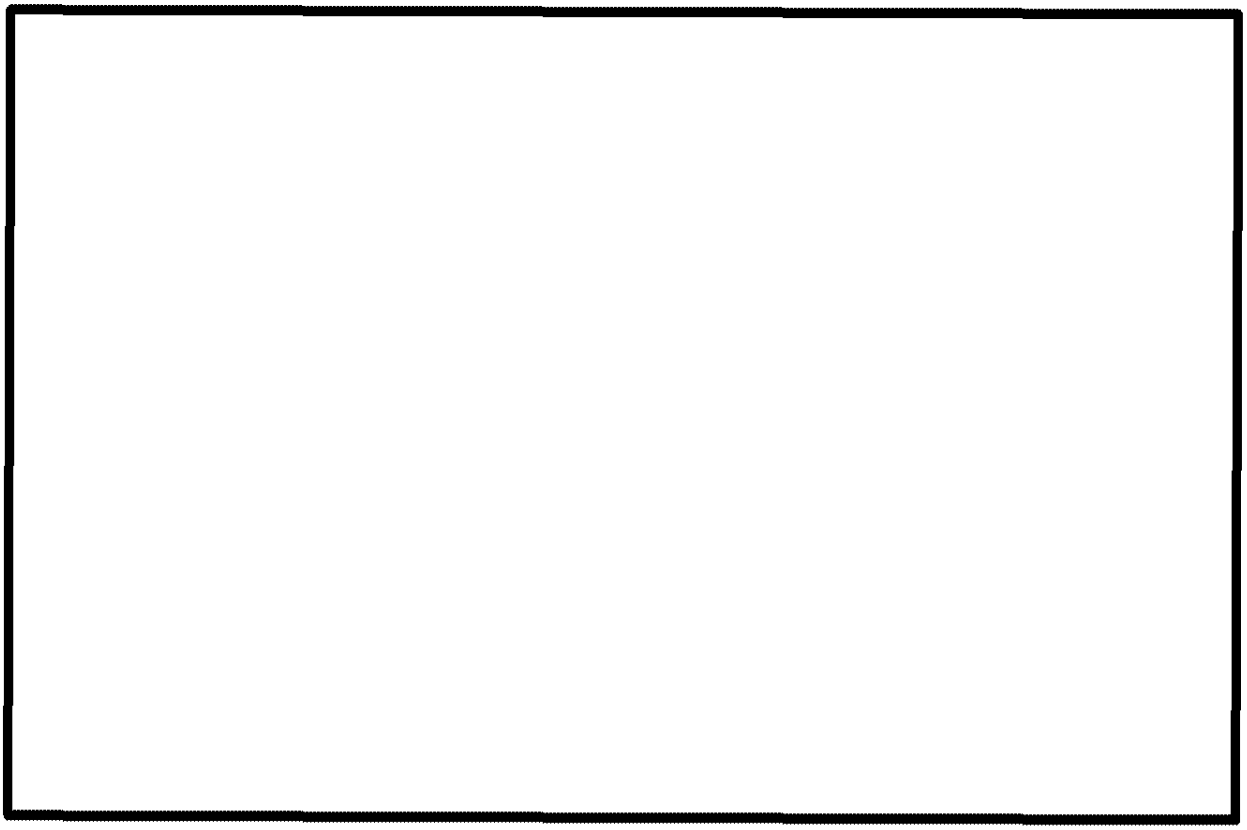
In addition, retained earnings are not contributed capital. The only way such funds could constitute an investment of capital is if they were removed, subjected to personal income tax, and then contributed as capital. There is no evidence of this in the instant case.

In addition, the Service notes that it has been established in a federal district court in De Jong v. INS, Civ. No. 6:94cv 850, that an alien cannot be deemed to have complied with the capital investment requirement if any portion of the alien's capital contribution derives from dividends or other funds received through operations of the new commercial enterprise. Thus, in the instant case, the petitioner may not establish eligibility through funds obtained through the operation of Belmont Capital Corporation, but must demonstrate an infusion of capital obtained elsewhere.

The regulations specifically state that an investment is a *contribution* of capital, and not simply a failure to remove money from the enterprise. The definition of "invest" in the regulations quoted above does not include the reinvestment of proceeds. In addition, 8 C.F.R. § 204.6(j)(2) lists the types of evidence required to demonstrate the necessary investment. The list does not include evidence of the reinvestment of the proceeds of the new enterprise. *See generally De Jong v. INS*, No. 6:94 CV 850 (E.D. Tex. Jan. 17, 1997); and *Matter of Izummi*, 22 I&N Dec. 169, 195 (Comm. 1998) for the propositions that the reinvestment of proceeds cannot be considered capital and that a petitioner's corporate earnings cannot be considered the earnings of the petitioner.

Furthermore, valuations of assets owned by the business or purchases made by the business may not be counted toward the investment. According to Matter of M-, 8 I&N Dec. 24 (BIA 1958; AG 1958), "It is an elementary rule that a corporation is a legal entity entirely separate and distinct from its stockholders, and this is true even though one person may own all or nearly all of the capital stock." See also Matter of Tessel, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980); Matter of Aphrodite Investments Limited, 17 I&N Dec. 530 (Comm. 1980). Thus, the value of the warehouse less the debt owed cannot be counted toward the capital required in this matter first because it is not an infusion of capital, and second because the corporation is a separate entity from the petitioner.

(b)(6)



In his response to the Request for Additional Evidence, the petitioner admitted that the amounts in question were loans, but he now wishes to have them characterized as capital contributions. The Service notes that the treatment and character of the funds cannot now be changed or manipulated to establish eligibility after the fact. First, it must be noted that no evidence of actual change in the treatment of the funds has been submitted. The petitioner did not submit copies of filed amended tax returns and/or evidence of amounts re-deposited. Second, it must be noted that one cannot qualify for an immigration benefit by making a material change to a

deficient petition. A petitioner must establish eligibility at the time of filing. The petition may not be approved at a future date after the petitioner becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, a petitioner may not make a material change to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements.

Additionally, the petitioner contends that he is "in the process" of investing the full amount. He (b)(6) claims that [redacted] has given him substantial funds in the past and that he will continue to provide him with gifts of funds which he will use for the business.

The Service notes that although a petitioner may qualify by being "in the process" of investing the requisite capital, that petitioner must still demonstrate that all of the capital has been placed at risk. Thus, a petitioner cannot qualify by merely placing a part of the required capital at risk while promising to invest the remainder later.

8 C.F.R. 204.6(j) states, in pertinent part, that:

> (2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner 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.

In the instant case, the petitioner has failed to demonstrate that he has placed the required capital at risk.

Lawfully Obtained Funds

(b)(6)

The evidence fails to establish that the funds were lawfully obtained. The petitioner claims that much of the funds were given to him by [redacted] and statements from an accountant and [redacted] were provided. However, no copies of gift tax returns were provided to demonstrate that the amounts were actually legal gifts. Furthermore, no copies of personal tax returns for [redacted] were submitted to establish where he obtained the funds. Moreover, the petitioner claims to have paid much into the corporation from other funds he owns, but no personal tax returns for him or his wife were submitted.

In addition, the record does not contain sufficient evidence such as checks, wire transfers, and corroborating bank statements to document the path of the capital from [redacted] to the petitioner and then to the new commercial enterprise. It is also noted that the Forms K-1 for the business indicate that a substantial amount was loaned to the corporation by [redacted] thus (b)(6) the legitimacy and "arm's–length" of any "gift" to the petitioner for use in the corporation is further called into question.

Title 8, Code of Federal Regulations, Section 204.6(j)(3) states:

To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, *the petition must be accompanied,* as applicable, by:

(i) Foreign business registration records;

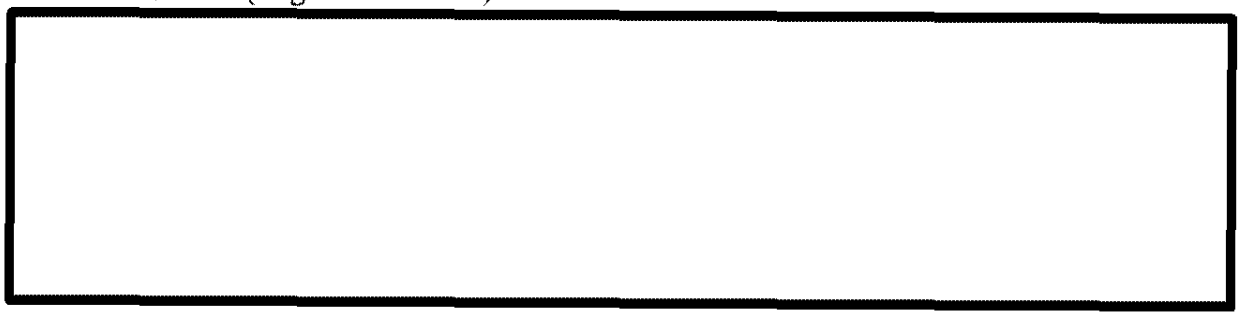
(ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or *any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner*;

(iii) Evidence identifying any other source(s) of capital; or

(iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years. (Emphasis added.)

In Matter of Soffici, the Service reversed the certified approval of an alien entrepreneur visa petition in part because the petitioner failed to demonstrate that he had invested the requisite amount of capital obtained by lawful means. (See Matter of Soffici at page 6.) In Matter of Ho, the Service found that the petitioner did not meet the burden of establishing the source of funds simply by submitting bank statements showing deposits, a letter indicating the number and value of shares of capital stock held by the petitioner in a foreign business, or documents which show someone else as the legal owner of capital. (See Matter of Ho .) Additionally, in Matter of Izumii, the Service found that the petitioner did not meet the burden of establishing the source of funds by simply submitting a bank letter stating that the funds had been deposited: "As the petitioner has not documented the path of the funds . . . the petitioner has failed to meet his burden of establishing that the [funds] were his own funds." (See Matter of Izumii at page 26.) Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

(b)(6)



In Matter of Caron International, I.D. 3085 (Comm. 1988) and Matter of Shaw, II I&N Dec. 277 (D.D. 1965), it was decided that the petitioner bears the burden of proof for the benefit sought. In addition, Section 291 of the Act, 8 U.S.C. 1361, states that the burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met such burden.

In view of the above, your Immigrant Petition by Alien Entrepreneur is hereby denied.

Sincerely,

Evelyn M. Upchurch, Director
Texas Service Center
134

U.S. Department of Homeland Security
P.O. Box 852841
Mesquite, TX 75185-2841

U.S. Citizenship and Immigration Services

February 5, 2007

xxxxx
Eugenio Cazoria
Miley & Brown, PC
6060 N. Central Expressway, #250
Dallas, TX 75206

Form:	I-829 (Petition by Entrepreneur to Remove Conditions)
Entrepreneur:	xxxxxx
Enterprise:	xxxxxxxInternational, Inc.
File:	xxxxx xxxxxxxxx

NOTICE OF DECISION

It is ordered that the Form I-829, Petition by Entrepreneur to Remove Conditions, seeking removal of his or her conditional permanent residence status, be denied as a matter of law because:

SEE ATTACHMENT

In accordance with the provisions of section 216A(b)(1) of the Act, the conditional resident's status and the status of the following dependents are terminated as of the date of this decision: February 5, 2007.

The conditional resident(s) listed above are hereby directed to immediately surrender their Alien Registration Cards, Form I-551, and any evidence of authorized temporary conditional residence to a local U.S. Citizenship and Immigration office.

This decision may not be appealed. However, the petitioner may request a review of this decision before an immigration judge pursuant to 8 CFR 216.6(d)(2). A Notice to Appear before an immigration judge will be issued and forwarded to the petitioner and the dependents listed above.

Attachment

The record indicates that the petitioner was accorded classification as an alien entrepreneur pursuant to § 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(5), based on an investment in a new commercial enterprise. The Form I-526 was approved on September 30, 1994.

The petitioner was then granted conditional permanent resident status May 16, 1996, and filed a Form I-829 (Petition by Entrepreneur to Remove Conditions) on March 12, 1998. A Request for Additional Evidence was issued on November 5, 2004, and a response was received on July 8, 2005. Upon review of the response, it has been determined that the petitioner has failed to demonstrate that he has made and sustained the requisite capital investment and that he has created or soon will create the requisite employment.

Capital Investment and Sustained Investment Actions

Title 8, Code of Federal Regulations, Section 216.6(c) states, in pertinent part:

> In adjudicating the petition, the director shall determine whether:
>
> (i) A commercial enterprise was established;
>
> (ii) The alien invested or was actively in the process of investing the requisite capital; and
>
> (iii) The alien sustained the actions described in paragraphs (c)(1)(i) and (c)(1)(ii) of this section throughout the period of the alien's residence in the United States. The alien will be considered to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence.
>
> (iv) The alien created or can be expected to create within a reasonable period of time ten full-time jobs to qualifying employees. In the case of a "troubled business" as defined in 8 CFR 204.6(j)(4)(ii), the alien maintained the number of existing employees at no less than the pre-investment level for the previous two years.

In the instant case, the alien has not made the investment nor sustained the described investment in paragraphs (c)(1)(i) and (c)(1)(ii) throughout the period of the alien's residence in the United States. The alien has not, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his capital investment over the two years of conditional residence.

(b)(6)

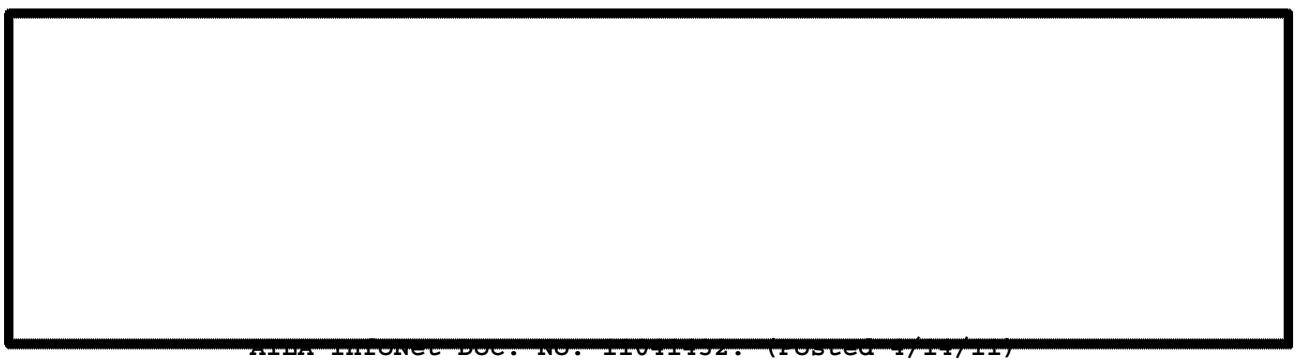
(b)(6)

The Service notes that loans from stockholders are not investments of capital and do not meet the requirements of 8 CFR, 204.6(e). 8 C.F.R. 204.6(e) states, in pertinent part, that:

> Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. . .
>
> Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

Therefore, loans from stockholders, which are advances made in exchange for a debt arrangement, are not qualifying capital for these purposes. In addition, it must be noted that the claimed transactions are not supported by adequate evidence such as checks, bank statements, real estate transactions evidencing the value and transfer of ownership, loan documents with security agreements, and other such documents necessary to demonstrate the claimed transactions. Self-serving statements from the petitioner or his partner do not adequately demonstrate the investment.

(b)(6)



Therefore, the evidence does not demonstrate that the petitioner invested the entire $500,000 as required or that he maintained his investment throughout the two year period. Thus, the benefit may not be granted. Furthermore, being "in the process" of investing does not relieve the petitioner of the requirement at 8 CFR, 204.6(j)(2) that he must show "actual commitment of the required amount of capital."

Evidence of Employment Creation

Title 8, Code of Federal Regulations, Section 216.6(c) states, in pertinent part:

> In adjudicating the petition, the director shall determine whether: . . .
>
> > (iv) The alien created or can be expected to create within a reasonable period of time ten full-time jobs to qualifying employees. In the case of a "troubled business" as defined in 8 CFR 204.6(j)(4)(ii), the alien maintained the number of existing employees at no less than the pre-investment level for the previous two years.

Title 8, Code of Federal Regulations, Part 204.6(j) states:

> A petition submitted for classification as an alien entrepreneur must be accompanied by evidence that the alien has invested or is actively in the process of investing lawfully obtained capital in a new commercial enterprise in the United States which will create full-time positions for not fewer than 10 qualifying employees. . .
>
> (4) Job creation--(I) General. To show that the new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:
>
> > (A) Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
> >
> > (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than 10 qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

The Form I-829 states that no employment positions were present at the time of the investment and that 30 were then created. This is in direct contrast to the Form I-526 which indicates that between 5 to 10 positions existed at the time of the investment. The letter from Counsel dated January 4, 2005, claims that the business had between 23 to 31 employees in 1996. It goes on to say that based on the tax returns, there were employees, but "we are unable to say how many."

The Service notes that no Forms I-9 were submitted even though they were requested and they are specifically mentioned in the regulations. Thus, it has not been demonstrated that the employees are qualified employees as defined at 8 CFR, 204.6(e).

In addition, it has not been demonstrated how many full-time positions existed before the original investment took place in 1994. The business was already operating, the I-526 states that there were employees, and thus it must be assumed that it had employees. The burden of proof is on the petitioner in this matter to establish the number of full-time positions before and after the investment took place so that it can be determined how many were created. The petitioner has been unable to provide adequate evidence in this regard.

Furthermore, the Service notes that according to Spencer Enterprises, Inc., Chang, et. al. v. United States of America, U.S. District Court, Eastern District California (March 28, 2001), it is reasonable for this Service to construe full-time employment to mean continuous, permanent employment. Therefore, the evidence should have included documentation of employees during the period of conditional residence. Neither Forms W-2 nor state employment reports for this period have not been submitted. Either of these documents would have reflected the amount each employee was paid.

(b)(4) [redacted]

The petitioner has not submitted evidence sufficient to demonstrate that the job creation requirement has been met or will be met in a reasonable amount of time. Over two years had passed between the approval of the I-526 petition and the submission of the Form I-829 to remove conditions. The employment creation/maintenance should have been substantially completed within that time. In addition, as the required infusion of capital into the job creating entity has not taken place, even if the positions had been created, it is improper to state that the petitioner's capital created or maintained the requisite number of full-time jobs.

The petitioner is clearly ineligible for the requested benefit under 8 CFR, Part 216.6. In addition, the petition is not deniable solely due to one of the seven features in the USCIS Field Memo of March 11, 1998. Therefore, the petition must be denied.

It is also noted that a petitioner must establish eligibility at the time of filing. The petition may not be approved at a future date after the petitioner becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, a petitioner may not make a material change to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements.

In Matter of Caron International, I.D. 3085 (Comm. 1988) and Matter of Shaw, II I&N Dec. 277 (D.D. 1965), it was decided that the petitioner bears the burden of proof for the benefit sought. In addition, Section 291 of the Act, 8 U.S.C. 1361, states that the burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met such burden.

In view of the above, your Immigrant Petition by Alien Entrepreneur is hereby denied.

Sincerely,

Evelyn M. Upchurch, Director
Texas Service Center
XM0134

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

(b)(6) [redacted]

CANAM ENTERPRISES
155 W. 72ND ST., #701
NEW YORK, NY 10023 (b)(6)

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [redacted] (b)(6)

PETITION: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

ON BEHALF OF PETITIONER:

[redacted]

CANAM ENTERPRISES (b)(6)
155 W. 72ND ST., #701
NEW YORK, NY 10023

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was approved by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office on certification. The director's decision will be withdrawn; the matter will be remanded for further action and consideration and a new decision.

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5).

The director determined that the petitioner had demonstrated a qualifying investment of lawfully obtained funds into a new commercial enterprise located in a regional center. Pursuant to the regulation at 8 C.F.R. § 103.4, the director certified the decision to this office based on the unusual, complex, and novel issues presented. We concur with the director that this case involves issues appropriate for certification. In this decision, we intend to provide guidance to the field on these issues, although we caution that every petition must be adjudicated on a case-by-case basis. While we concur with the director that the petitioner overcame the concerns raised in the director's request for additional evidence, we find that the record is deficient in other respects.[1] Thus, as will be discussed in more detail below, we are remanding the matter to the director to request additional evidence and enter a new decision.

The regulation at 8 C.F.R. § 103.4(a)(2) provides that the affected party has 30 days in which to submit a brief to this office. The director issued her decision on January 7, 2005, advising the petitioner to send any brief directly to this office within 30 days. As of this date, more than 30 days later, this office has received nothing from the petitioner or counsel.

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).

The record indicates that the petition is based on an investment in a business, PIDC Regional Center, LP III, located in a targeted employment area for which the required amount of capital invested has been adjusted downward. Thus, the required amount of capital in this case is $500,000.

INVESTMENT OF CAPITAL

8 C.F.R. § 204.6(e) states, in pertinent part, that:

---

[1] We note that we do not question the general regional center plan approved by Citizenship and Immigration Services. Rather, we find that the petitioner has not submitted sufficient evidence that his investment vehicle fulfills the proposals in the approved plan.

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness.

* * *

Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

8 C.F.R. § 204.6(j) states, in pertinent part, that:

(2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner 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. Such evidence may include, but need not be limited to:

(i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;

(ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices, sales receipts, and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

(iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

(iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

The regulations provide that a petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. A mere

deposit into a corporate money-market account, such that the petitioner himself still exercises sole control over the funds, hardly qualifies as an active, at-risk investment. *Matter of Ho*, 22 I&N Dec. 206, 209 (Comm. 1998). 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*). The full amount of the requisite investment must be made available to the business most closely responsible for creating the employment upon which the petition is based. *Matter of Izummi*, 22 I&N Dec. 169, 179 (Comm. 1998).

(b)(4) [redacted]

In her request for additional evidence, the director expressed concern regarding whether the petitioner's funds were fully at risk since they would only be loaned to Lannett and the loan was secured by the assets of Lannett. In response, counsel noted that the investment into the limited partnership was an equity investment. Counsel further notes that the investment structure in *Matter of Izummi*, 22 I&N Dec. at 169, involved loans to the employment generating entities and yet that decision, which found several problems with the investment structure, never suggested that investing in a company designed to loan money to the employment generating entity was problematic.

The director concluded that the business plan to loan the funds was not problematic. We concur. Nothing in the law, regulations, or precedent decisions indicate that the new commercial enterprise must take unnecessary risks, such as lending money without any security interests. We differentiate this case from a non-regional center case relying on direct employment where a petitioner sets up a shell company to lend money to the actual employment generating entity. *Cf. Matter of Soffici*, 22 I&N Dec. 158 (Comm. 1998) (finding that a petitioner cannot establish the requisite investment if he lends the money to the employment-creating enterprise). In addition, unlike the investment plan struck down in *Matter of Izummi*, 22 I&N Dec. 183-191, the instant plan does not require the partnership to set aside funds in reserve accounts or include a guaranteed redemption agreement. Thus, should the petitioner not get a return on his funds, he would have no legal recourse against the partnership or general partner for failure to set aside funds or breach of an agreement to buyback the petitioner's interest.

SOURCE OF FUNDS

8 C.F.R. § 204.6(j) states, in pertinent part, that:

> (3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:
>
> (i) Foreign business registration records;
>
> (ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five

years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

(iii) Evidence identifying any other source(s) of capital; or
(iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. *Matter of Ho*, 22 I&N Dec. at 210-211; *Matter of Izummi*, 22 I&N Dec. at 195. Without documentation of the path of the funds, the petitioner cannot meet his burden of establishing that the funds are his own funds. *Id.* Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). These "hypertechnical" requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at1040 (affirming a finding that a petitioner had failed to establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

The director did not question that the petitioner sufficiently established the lawful source of his funds. We simply note that the record contains satisfactory evidence that the petitioner's income since 1967 and the accrual of value to his real property can account for the accumulation of $500,000.

REGIONAL CENTER

Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, (8 USC 1153 note), as amended by Section 402 of the Visa Waiver Permanent Program Act of 2000, Pub. L. 106-396, provides:

(a) Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the Secretary of State, together with the Attorney General, shall set aside visas for a pilot program to implement the provisions of such section. Such pilot program shall involve a regional center in the United States for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

(b) For purposes of the pilot program established in subsection (a), beginning on October 1, 1992, but no later than October 1, 1993, the Secretary of State, together with the Attorney General, shall set aside 300 visas annually for five years to include such aliens as are eligible for admission under section 203(b)(5) of the Immigration and Nationality Act and this section, as well as spouses or children which are eligible, under the terms of the Immigration and Nationality Act, to accompany or follow to join such aliens.

(c) In determining compliance with section 203(b)(5)(A)(iii) of the Immigration and Nationality Act, and notwithstanding the requirements of 8 CFR 204.6, the Attorney General shall permit aliens admitted under the pilot program described in this section to establish reasonable methodologies for determining

the number of jobs created by the pilot program, including such jobs which are estimated to have been created indirectly through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment resulting from the pilot program.

The regulation at 8 C.F.R. § 204.6(m) provides:

(3) Requirements for regional centers. Each regional center wishing to participate in the Immigrant Investor Pilot Program shall submit a proposal to the Assistant Commissioner for Adjudications, which:

(i) Clearly describes how the regional center focuses on a geographical region of the United States, and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment;

(ii) Provides in verifiable detail how jobs will be created indirectly through increased exports;

(iii) Provides a detailed statement regarding the amount and source of capital which has been committed to the regional center, as well as a description of the promotional efforts taken and planned by the sponsors of the regional center;

(iv) Contains a detailed prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy in general as reflected by such factors as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center; and

(v) Is supported by economically or statistically valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and/or multiplier tables.

(4) Submission of proposals to participate in the Immigrant Investor Pilot Program. On August 24, 1993, the Service will accept proposals from regional centers seeking approval to participate in the Immigrant Investor Pilot Program. Regional centers that have been approved by the Assistant Commissioner for Adjudications will be eligible to participate in the Immigrant Investor Pilot Program.

(5) Decision to participate in the Immigrant Investor Pilot Program. The Assistant Commissioner for Adjudications shall notify the regional center of his or her decision on the request for approval to participate in the Immigrant Investor Pilot Program, and, if the petition is denied, of the reasons for the denial and of the regional center's right of appeal to the Associate Commissioner for Examinations. Notification of denial and appeal rights, and the procedure for appeal shall be the same as those contained in 8 CFR 103.3.

On February 28, 2003, Thomas E. Cook, Acting Assistant Commissioner for Adjudications, approved the Philadelphia Industrial Development Corporation (PIDC) as a regional center comprising of the geographical

boundaries of Philadelphia County. On April 23, 2004, William Yates, Associate Director for Operations, approved an amendment to the regional center proposal. This approval notice provides:

(b)(4) [redacted]

(b)(4)

[redacted]

NEW COMMERCIAL ENTERPRISE

Section 203(b)(5)(A)(i) of the Act states, in pertinent part, that: "Visas shall be made available . . . to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise" (Emphasis added.)

8 C.F.R. § 204.6(e) provides:

> Commercial enterprise means any for-profit activity formed for the *ongoing conduct* of lawful business including, but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned. This definition 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. This definition shall not include a noncommercial activity such as owning and operating a personal residence.

(Emphasis added.) The new commercial enterprise at issue is a limited partnership. As is clear from the above definition, CIS and its predecessor agency have never implied that limited partnerships are not acceptable and we acknowledge that Congress has expressly included limited partnerships as acceptable commercial enterprises. The issue, however, is whether the limited partnership was formed for the ongoing conduct of lawful business.

Section 15.1 of the Partnership Agreement provides:

> The Partnership shall be terminated and dissolved on (the "Termination Date") January 1 of the year following the year in which all of the Partnership's assets have been realized upon and distributed.

(b)(4) [redacted]

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, shall be certified to the Administrative Appeals Office for review.

U.S. Department of Homeland Security
P.O. Box 852381
Mesquite, TX 75185-2381

U.S. Citizenship and Immigration Services

December 1, 2010

(b)(6)

xxxx
C/O [redacted]
6731 Whittier Ave., Ste. A-100
McLean, VA 22101

Petition: I-526 (Alien Entrepreneur Petition)
Petitioner: xxxxxxx
Enterprise: NobleRealEstateFund, LLC
File: xxxxx

REQUEST FOR ADDITIONAL EVIDENCE

This office is unable to complete processing of your petition without further information. **Please read and comply with those items requested below, then resubmit the evidence requested to the above address, including this letter and the attached yellow sheet.** If your submission is more than several pages, please use acco-fasteners to attach the documents at the top of each page.

LAWFUL SOURCE OF FUNDS
The Service notes that the file contains a letter from Counsel listing the Exhibits (Parts I and II); however, it is noted for the record that the exhibits are not labeled, tabbed or marked as such in any way.

(b)(6) [redacted]

demonstrate the liquidation of these accounts either. There were some copies of Chinese accounts submitted with handwritten notations, but these documents were not accompanied by certified translations as required.

Therefore, please submit further evidence that all the capital was obtained from lawful sources. Such evidence should demonstrate the complete path of the requisite capital from its sources all the way to the escrow account.

Please comply with the above instructions and return this notice with your reply. *Failure to reply within 12 weeks may result in the denial of your petition.* The attached yellow sheet, this letter, and the requested documentation should be attached together with the yellow sheet on top.

Thank you.
Officer #134

U.S. Department of Homeland Security
P.O. Box 852381
Mesquite, TX 75185-2381

U.S. Citizenship and Immigration Services

December 1, 2010

xxxx
C/O James J. Park
Hanul Professional Law Corp.
3699 Wilshire Blvd., Ste. 1150
Los Angeles, CA 90010

Petition:	I-526 (Alien Entrepreneur Petition)
Petitioner:	xxxx
Enterprise:	Northern Beef Packers Limited Partnership
File:	xxxxxx

REQUEST FOR ADDITIONAL EVIDENCE

This office is unable to complete processing of your petition without further information. **Please read and comply with those items requested below, then resubmit the evidence requested to the above address, including this letter and the attached yellow sheet.** If your submission is more than several pages, please use acco-fasteners to attach the documents at the top of each page.

Capital Investment
The Service notes that the petitioner is investing in a partnership which will build and operate a meat processing plant in Brown County, South Dakota outside of Aberdeen. It is further noted that the Partnership Agreement (Petitioner's Exhibit 5) at section 8.2 (a)(iv) references "the Loan Agreement." However, there is no other mention of a loan agreement and no copy of one in the file. Please submit evidence which explains any such loan as well as a copy of any loan documents between the alien and the partnership.

(b)(6)

(b)(6)

Please comply with the above instructions and return this notice with your reply. ***Failure to reply within 12 weeks may result in the denial of your petition.*** The attached yellow sheet, this letter, and the documentation should be attached together with the yellow sheet on top.

Thank you.
Officer #134

U.S. Department of Homeland Security
P.O. Box 852381
Mesquite, TX 75185-2381

U.S. Citizenship and Immigration Services

December 1, 2010

xxxxxx

(b)(6)

Cho & Associates, LLC
6930 #B, Little River Tpk.
Annandale, VA 22003

Petition:	I-526 (Alien Entrepreneur Petition)
Petitioner:	xxxxxx
Enterprise:	Glovity Corporation
File:	xxxxxxx

REQUEST FOR ADDITIONAL EVIDENCE

This office is unable to complete processing of your petition without further information. **Please read and comply with those items requested below, then resubmit the evidence requested to the above address, including this letter and the attached yellow sheet.** If your submission is more than several pages, please use acco-fasteners to attach the documents at the top of each page.

You must submit evidence that a "new commercial enterprise" as defined in the regulations at 8 CFR, 204.6(h) has been established. It is noted that you checked Part 4 of the petition to indicate that an existing business was purchased. If a previously existing business was purchased, then the evidence must establish either that: 1) the initial car wash business purchased was established after November 30, 1990; or 2) the business was reorganized or restructured to such an extent that a new business resulted. Mere changes in name or ownership will not suffice. If a previously existing business was expanded by more than 40% in terms of net worth or number of employees, then the evidence must demonstrate the expansion.

You must submit further evidence that you have invested or are actively in the process of investing the required amount of your personal capital. Please include a written narrative which explains in detail how and when you placed your capital at risk.

(b)(6)

(b)(6)

(A) Bank statements for both the Petitioner and the new commercial enterprise showing amount deposited by the Petitioner in the U.S. business accounts of the new commercial enterprise;

(B) Evidence of all assets which have been purchased for use in the U.S. enterprise, including invoices, sales receipts, and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

(C) Evidence of all property transferred from abroad for use in the U.S. enterprise, including U.S. Customs Service commercial entry documents, bills of lading, and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market valuation of such property;

(D) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(E) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by your own assets, other than those of the new commercial enterprise, and for which you are personally and primarily liable.

You must submit evidence that you have invested, or are actively in the process of investing, capital obtained through lawful means. This evidence should include:

(A) Foreign business registration records;

(B) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or **any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of you**;

(C) Evidence identifying any other source(s) of capital; and

(D) Certified copies of any judgments, evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against you from any court in or outside the U.S. within the past 15 years.

It is not clear from the evidence how you obtained the capital used in the investment. The evidence must demonstrate how and when you obtained these funds.

You must submit evidence that your commercial enterprise will create not fewer than 10 full-time positions for qualifying employees.

(b)(4)

As this does not prove an increase in ten full-time positions, a comprehensive business plan which demonstrates the need for the positions should be submitted. The plan should not be based on speculation, but on reasonable methodologies and pertinent data.

In Matter of Ho, the Administrative Appeals Office held that 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." Elaborating on the contents of an acceptable business plan, the decision states the following:

> The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

Please comply with the above instructions and return this notice with your reply. Failure to reply within 12 weeks may result in the denial of your petition. The attached yellow sheet, this letter, and the documentation should be attached together with the yellow sheet on top.

Thank you.

Officer #134

RFE TEMPLATE #1

Please submit further evidence that a "new commercial enterprise" as defined in the regulations at 8 CFR, 204.6(h) has been established.

If the new commercial enterprise has been established in a targeted employment area, submit evidence that:

(A) In the case of a rural area, evidence that the new commercial enterprise is principally doing business within a civil jurisdiction not located within any standard metropolitan statistical area (MSA) as designated by the Office of Management and Budget, or within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States; or

(B) In the case of a high unemployment area:

1.) evidence that the MSA, the specific county within a MSA, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business has experienced an average unemployment rate of 150 percent of the national average rate; or

2.) a letter from an authorized body of the government of the state in which the new commercial enterprise is located which certifies that the geographic or political subdivision of the MSA or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area.

You must submit evidence that you have invested or are actively in the process of investing the required amount of capital. Please submit copies of wire statements, personal checks, tax returns for the business, and/or other such transactional documents sufficient to demonstrate the investment. Additional evidence may also include:

(A) Bank statements for both the Petitioner and the new commercial enterprise showing amount deposited by the Petitioner in the U.S. business accounts of the new commercial enterprise;

(B) Evidence of all assets which have been purchased for use in the U.S. enterprise, including invoices, sales receipts, and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

(C) Evidence of all property transferred from abroad for use in the U.S. enterprise, including U.S. Customs Service commercial entry documents, bills of lading, and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market valuation of

such property;

(D) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(E) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by your own assets, other than those of the new commercial enterprise, and for which you are personally and primarily liable.

You must submit evidence that you have invested, or are actively in the process of investing, capital obtained through lawful means. This evidence should include:

(A) Foreign business registration records;

(B) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of you;

(C) Evidence identifying any other source(s) of capital; and

(D) Certified copies of any judgments, evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against you from any court in or outside the U.S. within the past 15 years.

You must submit evidence that your commercial enterprise will create not fewer than 10 full-time positions for qualifying employees. This evidence should include:

(A) Documentation consisting of photocopies of relevant tax records, Forms I-9, and quarterly state employment reports for 10 qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or

(B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than 10 qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

If the business has been established through a capital investment in a troubled business, you must submit evidence that the enterprise meets the definition of a troubled business provided in 8 CFR, 204.6(e) as well as evidence of the number of existing employees being maintained at no less than the pre-investment level for a period of at least two years. Submit photocopies of tax records, Forms I-9, or other relevant documents for the

qualifying employees and a comprehensive business plan.

You must submit evidence that you are 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. Such evidence should include, as applicable:

(A) A statement of the position title that you have or will have in the new enterprise and a complete description of your duties;

(B) Evidence that you are either a corporate officer or a member of the corporate board of directors; or

(C) If the new enterprise is a partnership, either limited or general, evidence that you are engaged in either direct management or policy making activities.

Please comply with the above instructions and return this notice with your reply. Failure to reply within 12 weeks may result in the denial of your petition.

RFE EXAMPLE TEMPLATE #2

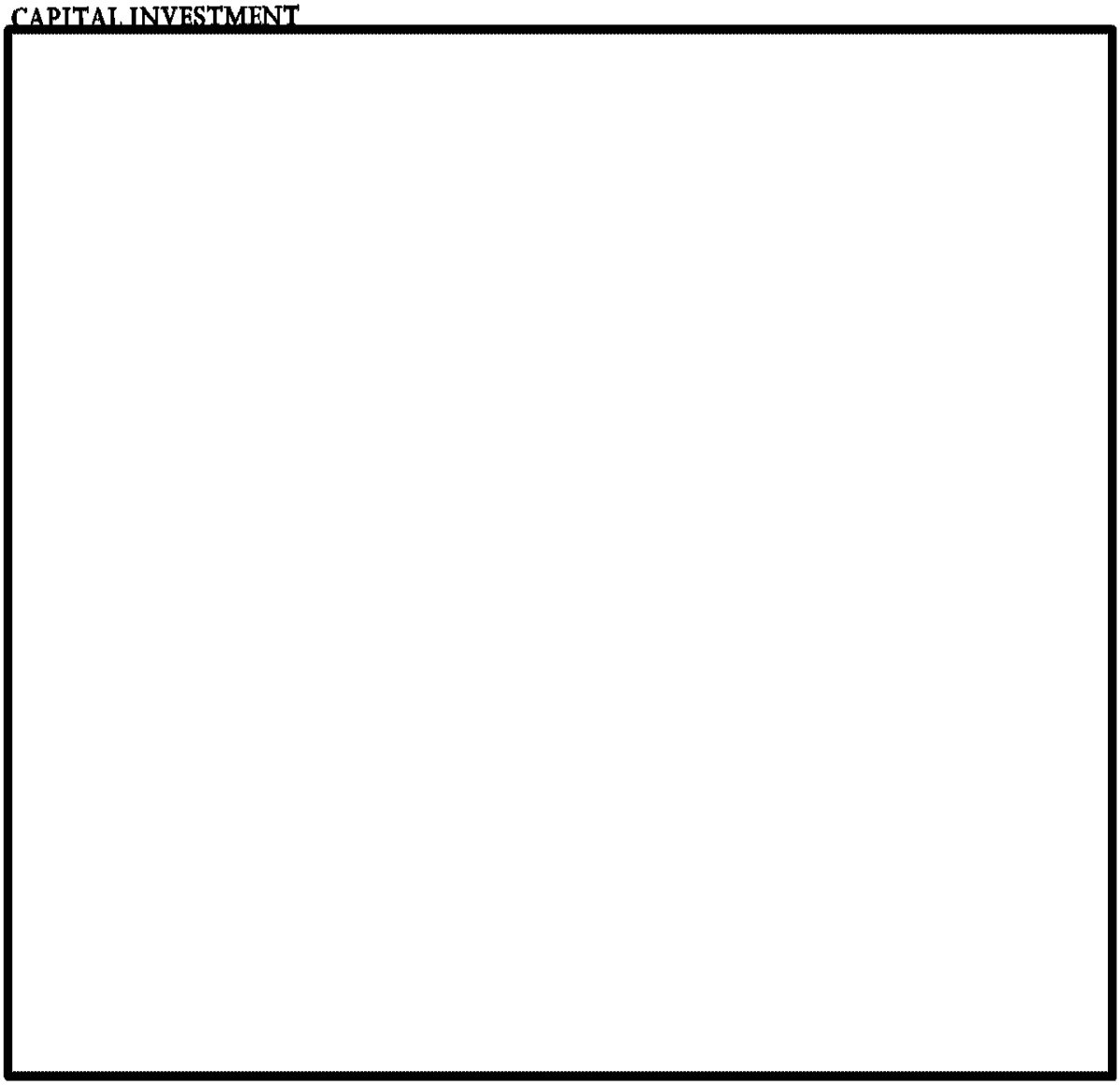
This office is unable to complete processing of your petition without further information. Please read and comply with those items requested below, then resubmit the evidence requested to the above address. If your submission is more than several pages, please use acco-fasteners to attach the documents at the top of each page.

ESTABLISH NEW COMMERCIAL ENTERPRISE

The evidence indicates that you purchased a pre-existing marina business. In addition, several business entities were subsequently formed. Please note that the purchase of an existing business is not necessarily the creation of a new enterprise. Please submit further evidence to show that the new commercial enterprise on which the petition is based was created either: 1) after November 29, 1990; 2) as a result of a reorganization or restructuring of an existing business; or 3) as a result of an expansion of the existing business by 40% in terms of net worth or employees. Even though several additional corporate and partnership entities were created, it is not clear how the main marina business on which this petition is based is newly created.

CAPITAL INVESTMENT

(b)(4)



In addition, the Service notes that it has been established in a federal district court in De Jong v. INS, Civ. No. 6:94cv 850, that an alien cannot be deemed to have complied with the capital investment requirement if any portion of the alien's capital contribution derives from dividends or other funds received through operations of the new commercial enterprise.

The regulations specifically state that an investment is a contribution of capital, and not simply a failure to remove money from the enterprise. The definition of "invest" in the regulations quoted above does not include the reinvestment of proceeds. In addition, 8 C.F.R. § 204.6(j)(2) lists the types of evidence required to demonstrate the necessary investment. The list does not include evidence of the reinvestment of the proceeds of the new enterprise. *See generally De Jong v. INS*, No. 6:94 CV 850 (E.D. Tex. Jan. 17, 1997); and *Matter of Izummi*, 22 I&N Dec. 169, 195 (Comm. 1998) for the propositions that the reinvestment of proceeds cannot be considered capital and that a petitioner's corporate earnings cannot be considered the earnings of the petitioner.

Please submit copies of checks, wire transfers, and bank statements sufficient to demonstrate the amounts of capital you personally contributed as well as copies of federal tax returns for all entities in the years such qualifying investments were made. In this case it appears that the claimed investment is chiefly in the form of retained earnings from the business itself.

In addition, the file contains evidence to support claims that you risked your personal capital through guaranteeing loans and making additional payments on behalf of the business. However, it does not appear that specific personal assets secure any indebtedness in the manner described in Matter of Hsiung, a precedent decision requiring assets to be specifically identified and all security interests to be perfected. In order to qualify, no part of the indebtedness may be secured by the assets of the new commercial enterprise.

SOURCE OF FUNDS

(b)(4)

JOB CREATION

(b)(4)

Please submit further evidence including copies of quarterly state employment tax reports

and/or Forms W-2 for a period before and after the purchase of the business. It is necessary to demonstrate that the investment of your capital created at least ten new full-time (35 hours per week) qualifying positions. If the jobs have not been created, you must submit a comprehensive business plan proving that the positions will be needed.

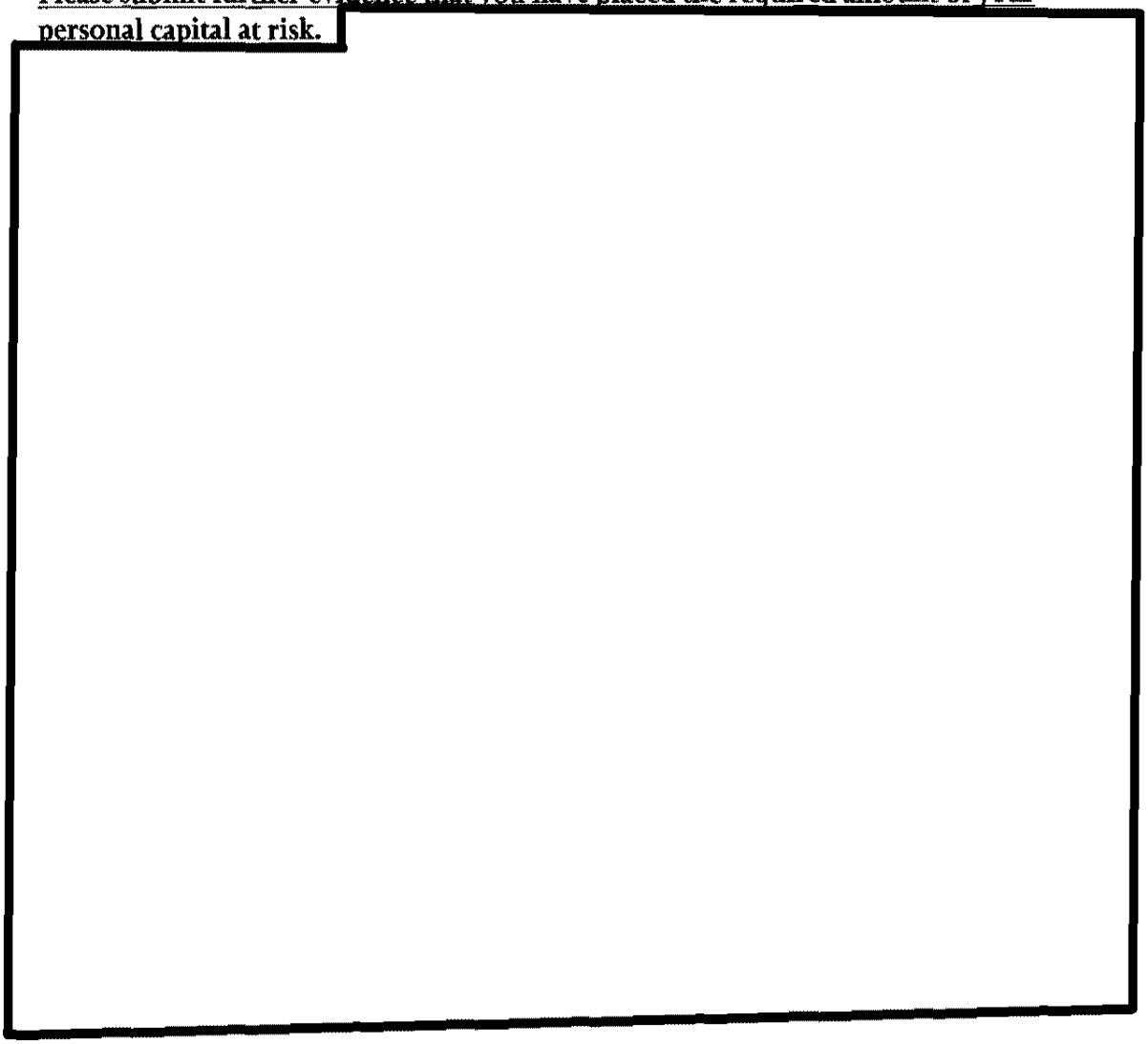
RFE EXAMPLE TEMPLATE #3

Please read and comply with those items requested below, then resubmit the evidence requested to the above address. If your submission is more than several pages, please use acco-fasteners to attach the documents at the top of each page.

Please submit further evidence that a "new commercial enterprise" as defined in the regulations at 8 CFR, 204.6(h) has been established. The evidence indicates that a holding company, Network of Georgia, Inc., was established as a new enterprise, and that it engaged in several activities. However, it is noted that one of the businesses, Salda Beauty Supply, is the result of a purchase of a pre-existing business. If the capital and jobs related to this business are to be counted, you must show that either: 1) this business (the beauty store itself) was created after November 29, 1990; 2) it was reorganized or restructured to such an extent that a "new" business resulted; or 3) that it was expanded by 40% (in terms of net worth or number of employees).

Please submit further evidence that you have placed the required amount of your personal capital at risk.

(b)(4)



It is noted that the regulations define "invest" as a contribution of capital. Indebtedness secured by the assets of the new commercial enterprise does not constitute a qualifying investment, and loans made to the business similarly will not establish eligibility.

Also, as several of the properties are rental properties, it will be necessary to provide evidence that they have been rented, including documentation of the payments being received/deposited by the corporation.

Please submit further evidence that you have invested, or are actively in the process of investing, capital obtained through lawful means. This evidence should include copies of corporate, partnership (or any other entity in any form which has filed in any country or subdivision), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of you.

If any of the capital was received as a gift, the evidence should include tax returns of the donor and must demonstrate how he/she obtained the capital as well as evidence that the funds were given as a gift, including any and all gift tax returns required to be filed.

U.S. Department of Justice
Immigration and Naturalization Service

HQ 40/6.1.3

425 I Street NW
Washington, DC 20536

June 12, 1998

MEMORANDUM FOR: Regional Counsels
All Regional Directors
All District Directors (Including Foreign)
All Officers-In-Charge (Including Foreign)
All Port Directors
All Service Center Directors
Directors, ODTF-Glynco, GA and Artesia, NM

FROM: Joseph R. Greene */s/ Michael D. Cronin*
Acting Associate Commissioner for Programs

SUBJECT: Immigrant Investor Petitions - Recent Actions
And Procedures for Eliminating the Hold

GENERAL INFORMATION

This memorandum provides Service Centers with the procedures that are to be followed for adjudicating immigrant investor petitions (Forms I-526 and I-829) that have been placed in the hold pursuant to the March 19, 1998 memorandum from this office.

Pursuant to the instructions in the March 11, 1998, field memorandum, the Administrative Appeals Office (AAO) received 19 immigrant investor petitions (I-526) on certification from the four service centers and is preparing decisions on these cases. The Immigration and Naturalization Service (Service) will designate from among these 19 certified cases certain precedent decisions.

During the week of July 6, 1998, the Service will provide intensive supplemental training on these precedent decisions and related EB-5 matters to select adjudicators.

After the training, the Service will assemble a "tiger team" to adjudicate the cases currently in the Headquarters-directed hold. The "tiger team" will operate from the California Service Center from July 15 through August 13.

FORWARDING PETITIONS to the TIGER TEAM

Service Centers are instructed to forward all petitions (I-526 and I-829) in the hold, clearly marked in red marker "EB-5 HOLD CASES", to the California Service Center by express mail, return receipt requested, by July 1st, at the following address: 24000 Avila Road, 2nd floor (P.O. Box 30111), Laguna Nigel, California 29656. The records point of contact is Lydia Lundquist, Program Assistant (949-360-2820). Petitions which fall within the terms of the hold should continue to be forwarded until August 1st. Each Service Center should keep a complete list of transferred hold cases, with shipping receipts and tracking numbers.

Service Centers must notify petitioners whose cases have been forwarded to the California Service Center that their case has been forwarded for adjudication under the terms of decisions by the AAO and this field memorandum. This notification shall be by the Form I-797 transfer notice generated when transfer is made in CLAIMS and electronic jurisdiction is transferred to the California Service Center. In addition, petitioners shall be advised that if they seek to withdraw a petition and file a new petition in its place pursuant to the terms of this field memorandum, they must forward the new petition and the request for withdrawal, clearly marked in red marker "HOLD WITHDRAWAL" to the above address by July 15.

FORM I-526 ADJUDICATION

The "tiger team" is to adjudicate the approximately 680 initial cases currently being held, namely, newly filed Form I-526 petitions, Form I-526 petitions approved by the Service but returned by the Department of State for revocation before visa issuance, and related approved Form I-526 petitions with pending Form I-485 adjustment of status applications.

Aliens who wish to withdraw a petition from the hold and file a new Form I-526 petition may proceed in two ways. First, in accordance with the May 21 field memorandum, if an alien withdraws a petition from the hold prior to the AAO decisions, a new petition may be filed which, if it does not contain features that subject it to the hold, will be adjudicated under standard procedures. Assuming that there is no need for additional evidence, a certification for review, or other questions, the new petition will be adjudicated within the average processing time for this type of petition (currently 60 days). These petitions will be processed in chronological order by date of receipt (or date of fee acceptance) in accordance with O.I. 103.2(q).

Second, despite the extraordinary circumstances leading to the Headquarters-directed hold, the Service assumes responsibility to promote job-creating and job-preserving investments and is permitting a petitioner to withdraw a petition within the hold after July 1, and file a new petition which clearly identifies the alien's withdrawn petition. Such newly filed petitions will be reviewed by the "tiger team" in the order in which they are filed. The "tiger team" will only be able to complete the adjudication of petitions that are complete, require no additional evidence, and raise no questions about eligibility under the law and regulations. Where additional evidence is needed in order to complete the adjudication, the "tiger team" shall issue a Request for Evidence, directing the alien to submit the evidence to the Service Center having jurisdiction over the new commercial enterprise, and return the file to that Service Center.

Similarly, if necessary, the "tiger team" shall forward complex financial or economic questions to Headquarters Adjudication (Business and Trade Services Branch) for advice and return the file to the appropriate Service Center to complete the adjudication. A request for advice shall include a memorandum discussing the specific issues which need to be addressed, relevant research, background or other information, and shall, if possible, provide clear recommendations.

FORM I-829 ADJUDICATION

The "tiger team" shall adjudicate petitions on Form I-829 to remove conditions, filed at the end of an alien's 2-year period of conditional status, in accordance with the AAO decisions. In this regard, the Office of Legal Counsel of the Department of Justice has verified that, under the plain language of INA section 216A, the Service lacks authority to approve petitions to remove conditions for aliens who have entered the United States as conditional residents and whose petitions to remove conditions may be subject to denial because they fail to meet the requirements of the law.

The Service, however, has determined that an alien whose Form I-829 petition fails to comport with the law may be provided with the opportunity to file a new petition that does not contain the defects in their original filing within 90 days of the date of the notification to intent to terminate status. Before a notice of intent to terminate status is sent, the petition should be screened to determine eligibility to file a new Form I-526. This process is not available to aliens whose petitions to remove conditions are denied because the business in which the alien originally invested has ceased to operate or has failed to create or preserve 10 full-time jobs in the United States or to an alien seeking to invest in a different business.

If an alien is determined to be eligible, the Notice of Intent to Terminate Status shall advise the alien that, if a new petition is filed within the specified time period and if it is approved, the alien will be deemed to have remained in lawful conditional status and may proceed to withdraw the old petition to remove conditions and to begin a new 2-year

period of conditional resident status in order to fulfill the new petition to the Service Center with jurisdiction over the new commercial enterprise.

The notice of intent shall further advise the alien that, as section 245(f) of the INA prohibits these immigrant investor visa conditional residents from adjusting status in the United States, he or she must apply for an immigrant visa at a consular post abroad in order to initiate the new 2-year period of conditional status. In addition, the alien must be advised that, to establish eligibility for this process, the alien must demonstrate that he or she: fully complied with the business plan in the original initial petition; sustained the investment throughout the 2-year conditional period; was denied the request to remove the conditions on their status because his or her original petition did not comply with the law and the regulations, and; is basing the new petition on the same job-creating or job-preserving United States business as the original petition.

Finally, service officers are reminded that, as stated in the field memorandums of March 11 and May 21, 1998, immigrant investor petitions not subject to the hold should be adjudicated in the same manner as any other newly filed petition; they are not covered by this field memorandum. Pursuant to the May 21 field memorandum, petitioners whose cases do not fall within the terms of the hold are to be advised of this determination through routine procedures.

Questions regarding these field instructions, may be directed to Katharine A. Lorr at HQADN, (202) 514-5014. The Offices of Naturalization Operations and Field Operations have concurred with this memorandum.