

USCIS EB-5 Training Materials (through May 2011)
As released to IIUSA through a FOIA request

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(prepared by Karla Creech, Cornell Law School)

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U.S. Citizenship and Immigration Services

Immigrant Investor Program
New – October 2010

IIUSA DOC#0012012 via FOIA
(Pub: 2/24/12) - www.iiusa.org

General EB-5 Program Overview

Background:

- Section 203(b)(5) of the Immigration and Nationality Act (INA), allocates 10,000 “EB-5” immigrant visas per year.
 - 3,000 visas are reserved for aliens who invest in targeted employment areas (TEAs).
 - 3,000 visas are reserved for aliens who invest in commercial enterprises affiliated with Regional Centers.
- The EB-5 regulations may be found at 8 CFR 204.6 and 8 CFR 216.6, respectively.



EB-5 Capital Investment Structures

EB-5 Investors may be eligible for an EB-5 immigrant visa if they have invested – or are actively in the process of investing - the required amount of capital into one of the following for-profit business-types:

- A new commercial enterprise (created after 11/29/1990);
- An enterprise which will expand to 140% of pre-investment net worth or number of employees, or;
- A troubled business in which jobs will be preserved.



EB-5 Capital Investment Thresholds

- The standard capital investment requirement for an EB-5 investor is \$1 million.
- The capital investment requirement for an EB-5 investor in a Targeted Employment Area (TEA) which is either in a high unemployment area, (calculated as an area with an unemployment rate that is at least 150% of the national average), or a Rural Area (RA) is \$500,000.



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EB-5 Job Creation Requirements

- Each EB-5 investor must demonstrate that their capital investment will create/preserve at least ten (10) jobs for qualified U.S. workers within the United States.
- A qualified U.S. worker is a U.S. citizen, LPR, or other qualified immigrants (e.g. asylee or refugee).
- Jobs created for nonimmigrant workers and/or members of the EB-5 investor's family are not qualifying.



Regional Center Pilot Program

- The Immigrant Investor Pilot Program (“Pilot Program”) was created by Section 610 of Public Law 102-395 (October 6, 1992), and has been extended through September 30, 2012.
- EB-5 requirements for an investor under the Pilot Program are essentially the same as in the basic EB-5 investor program, except the Pilot Program provides for investments that are affiliated with an economic unit known as a “Regional Center”. Investments made through Regional Centers can take advantage of a more expansive concept of job creation including both “indirect” and “direct” jobs.



Direct v. Indirect Jobs

- Direct jobs are actual identifiable jobs for qualified employees located within the commercial enterprise into which the EB-5 investor has directly invested his or her capital.
- Indirect jobs are those jobs shown to have been created collaterally or as a result of capital invested in a commercial enterprise affiliated with a regional center by an EB-5 investor.



Obtaining Lawful Permanent Resident (Green Card) Status through EB-5

There are four steps to becoming a Lawful Permanent Resident (LPR) through the EB-5 program.

1. Form I-526 immigrant petition approval.
2. Application for an immigrant visa either through adjustment of status (Form I-485) in the United States with USCIS, or through an application for immigrant visa (Form DS-230) with the Department of State (DOS).
3. Upon approval of the Form I-485 or admission on an EB-5 immigrant visa, the alien is granted two-years of conditional permanent resident (CPR) status.
4. A Form I-829 petition to remove the conditions on the LPR status must be filed at the end of the two-year conditional period. If the alien has fulfilled the EB-5 requirements in accordance with the business plan in the approved Form I-526 petition, then the conditions on the alien's LPR status will be removed.



Regional Center Statistics

- There are currently 114 approved Regional Centers (RCs), operating in 35 states, inclusive of the District of Columbia and Guam.
- A complete list of approved RCs is also available online at <http://www.uscis.gov/eb-5centers> .
- Approximately 90-95% of the individual Form I-526 petitions filed each year are filed by Alien Investors who are investing in RC-affiliated commercial enterprises.



EB-5 Individual Petition Filing Receipts FY05 – FY10

Fiscal Year	Form I-526 Petition	Form I-829 Petition
FY10 *Preliminary	1727*	690*
FY09	1028	437
FY08	1257	390
FY07	776	194
FY06	486	89
FY05	332	37



Form I-526 Petition Final Actions and Final Action Percentages for FY05 – FY10

Fiscal Year	Form I-526 Approvals	Final Action %	Form I-526 Denials	Final Action %
FY10 *Preliminary	1271*	89%*	153*	11%*
FY09	1262	86%	207	14%
FY08	640	84%	120	16%
FY07	473	76%	148	24%
FY06	336	73%	124	27%
FY05	179	53%	156	47%



**U.S. Citizenship
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Services**

Form I-829 Petition Final Actions and Final Action Percentages for FY05 – FY10

Fiscal Year	Form I-829 Approvals	Final Action %	Form I-829 Denials	Final Action %
FY10 *Preliminary	253*	83%*	52*	17%*
FY09	347	86%	56	14%
FY08	159	70%	68	30%
FY07	111	69%	49	31%
FY06	106	64%	59	36%
FY05	184	62%	112	38%



EB-5 Visa Usage

Fiscal Year	Total EB-5 Visas Issued
FY10 *Preliminary	1886*
FY09	4,218
FY08	1,360
FY07	806
FY06	744



EB-5 Case Processing

Form Type	Target Processing Time	Current Processing Time
Form I-526	Five Months	Five Months
Form I-829	Five Months	Six Months
RC Initial Designation Proposal	Four Months	Five Months
RC Amended Designation Proposal	Four Months	One Month
Note: Responses to requests for evidence (RFEs) for individual petitions, and for new or amended RC Proposals are matched with the case file upon receipt of the response. CSC strives to finalize EB-5 cases within 30 days after the responses to the RFEs are received.		



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Form I-924 & I-924A

- **The USCIS Final Fee Schedule “Final Fee Rule” was published in the Federal Register on September 24, 2010. [FR 75 58961]**
- **As a result of this final rulemaking, USCIS will be implementing the Office of Management and Budget (OMB) approved Form I-924, Application for Regional Center Under the Immigrant Investor Pilot Program, and Form I-924A, Supplement to the Form I-924 on November 23, 2010 (11/23/2010). [See Docket ID: USCIS-2009-0033 Agency: USCIS RIN: 1615-AB80 at www.regulations.gov.]**



Form I-924

- **Effective 11/23/2010, Form I-924, Application for Regional Center under the Immigrant Investor Pilot Program, will be required for the filing of both initial RC applications and amended RC applications. The Form I-924, which will have a filing fee of \$6,230 will:**
- **Clarify filing requirements for the RC designation;**
- **Improve the quality of RC applications;**
- **Better document eligibility for the Pilot Program;**
- **Alleviate content inconsistencies among applicants' submissions; and**
- **Support a more efficient process for adjudication of the RC applications.**



Form I-924A Supplement

- The Form I-924A, Supplement to Form I-924, will be the vehicle for a yearly RC reporting requirement pursuant to newly amended 8 CFR 204.6(m)(6).
- Each approved RC will be required to file the I-924A to report RC-related activities for the preceding fiscal year within 90-days of the end of the fiscal year (on or before December 29th of the calendar year in which the fiscal year ended.)
- **The submission of Form I-924A will not be required to report on RC EB-5 activity in FY10, but will be required to be filed by all approved RCs for FY11 on or before December 29, 2011.**
- There is no filing fee for the Form I-924A.
- USCIS plans to publish summarized RC data in order to be responsive to requests for this information from a broad spectrum of USCIS's external stakeholders, to include members of Congress, other federal agencies, state agencies, and major media outlets.



EB-5 Inquiries

- Reminder: USCIS has published a page entitled “EB-5 Inquiries” on the www.uscis.gov website that outlines how the public may make inquire on EB-5 related matters.
- This webpage may be accessed from the USCIS homepage as follows:
- Home > Working in the United States > Permanent Workers > Employment-Based Immigration: Fifth Preference EB-5.



EB-5 Inquiries, Cont'd

The “EB-5 Inquiries” page clarifies:

- The EB-5 inquiries that are appropriate to send to the EB-5 mailbox at Uscis.immigrantinvestorprogram@dhs.gov, and;
- Other avenues that can be used to send questions or inquiries to USCIS that are not suitable for the EB-5 mailbox.

Note: The CSC has recently implemented an informational “auto-reply” that is now provided in response to emails that are sent to the EB-5 Mailbox. This auto-reply contains some great information and links to USCIS web-pages and other sites that the public can use to obtain EB-5 related information.



Reporting EB-5 Fraud & Misrepresentation to USCIS

- Many USCIS External Stakeholders have expressed concerns regarding the potential for fraud and misrepresentation within the EB-5 program.
- USCIS takes allegations regarding EB-5 program malfeasance very seriously. EB-5 ISOs follow established USCIS procedures for referring cases to the Fraud Detection & National Security Directorate (FDNS) when an EB-5 case appears to contain fraud or material misrepresentations.
- General information about FDNS can be found on the USCIS website www.uscis.gov at: Home > ABOUT US > Directorates and Program Offices > Fraud Detection and National Security.



Reporting EB-5 Fraud & Misrepresentation to USCIS

- Members of the public may report instances of fraud or misrepresentation to the EB-5 mailbox at Uscis.immigrantinvestorprogram@dhs.gov.
- It is helpful if the information provided contains specific information relating to the allegations of fraud or misrepresentation, supported by documentation, if possible.
- Information of this nature that is received through the EB-5 mailbox will be reviewed by EB-5 program staff, and if it appears to be credible, may be provided to the affected party in an EB-5 case in accordance with 8 CFR 103 and 205 as part of an adverse case action. Such information may also be provided to FDNS through established USCIS procedures.



EB-5 Expedite Requests

- Public Law No. 102-395 provides for priority to be given to Regional Center-affiliated individual petitions. However, the statute does not provide criteria for USCIS to use to determine how petitions filed under the regional center program should be given priority over one another.
- USCIS has national expedite criteria for all petitions and applications, which are posted on the USCIS website.
- The petitioner must demonstrate that one or more of the expedite criteria have been met to be granted an expedite.



EB-5 Expedite Requests, Cont'd

- The Director of the CSC follows the national expedite criteria when determining whether to grant an expedite request for an EB-5 petition.
- One of the national expedite factors is the “severe financial loss to a company or to an individual.” Most of the EB-5 related expedite requests that CSC receives are based on this factor.
- Most EB-5 petitions contain escrow agreements which specify that the capital investment may not be released into the investment project until the approval of the Form I-526 petition.
- USCIS would be inundated by expedite requests if expedite requests were granted based upon these self-imposed financing arrangements.



EB-5 Expedite Requests, Cont'd

- Expedite requests for EB-5 cases should be directed to the EB-5 program mailbox at:
Uscis.immigrantinvestorprogram@dhs.gov .
- USCIS believes that the most equitable approach is to adjudicate EB-5 petitions in accordance with our first-in, first out procedures.



Public Law 106-273 Cases

- The 21st Century Department of Justice Appropriations Authorization Act Public Law No. 107-273, 116 Stat. 1757 (Nov. 2, 2002) requires a special analysis of the capital investment in multiple commercial enterprises and the resulting job creation in certain petitions that were approved after January 1, 1995 and before August 31, 1998.
- The DHS Regulatory Agenda indicated that the Proposed Rule for the Implementation of the Provisions of P.L. 107-273 would be published in July of 2010. USCIS is still waiting for DHS to clear the rule for publishing.



Public Law 106-273 Cases, Cont'd

- USCIS has:
 1. reviewed all of the EB-5 cases affected by P.L. 107-273.
 2. Approved pending EB-5 Public Law cases in the instances where the evidence of record shows that the alien has met the eligibility requirements specified under the P.L. 107-273.
- 581 EB-5 Public Law cases remain. These cases are being held in abeyance pending the finalization of the regulations implementing the provisions of the public law.
- USCIS will dedicate a special team of officers to the handling of these cases once the regulations are published.



Questions?



In-Depth Capital Investment Issues

1

In-Depth Capital Investment Issues

- 8 C.F.R. 204.6(e):

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. . .

- You may see many different forms of capital being used. Aliens have established eligibility in the past through direct cash infusions in a business, incurring debt on behalf of a business, securing loans for a business by risking their personal assets, buying inventory for a business with their personal capital, paying the bills of a business with their personal capital, and many other arrangements. The key is to look for evidence that the alien's personal capital is at risk.

- You may see aliens attempting to shield their capital from risk. However, capital that is not fully at risk is therefore not fully available for job creation.
- Sometimes a faulty financial arrangement will be made obvious, but other times you may see petitioners concealing arrangements.

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- Sometimes a faulty financial arrangement will be made obvious, but other times you may see petitioners concealing arrangements.

➤ Cases have been seen with some of the following deficiencies:

- Aliens loaning funds to the enterprise
- Aliens setting aside funds
- Aliens placing funds in passive investments
- Aliens using other people's or entity's funds
- Aliens using faulty promissory notes as capital
- Aliens not naming which assets secured indebtedness

- Aliens claiming that their overseas assets could secure debt in the US without proving that US courts would honor the debt as well as the cost
- Aliens claiming that debt owed to the business they owned would automatically trigger foreclosure on their assets (not an arms-length transaction)
- Aliens routing capital back to themselves, others, or other businesses not responsible for employment creation. (*Hint: Just because it was deposited one day does not mean it was not removed another day – Look for corroborative evidence that it was invested*)
- Aliens claiming the normal operating expenses a business paid as contributed capital

- Aliens claiming to be “in the process of investing” while capital is not actually at risk
- Aliens claiming an unproven fair market value of software, patents, or other assets.
- Aliens arranging to have their capital returned to them via a guarantee (before or after conditions are removed)
- Aliens claiming their capital is at risk via a personal loan guarantee when any part of the indebtedness is secured by the assets of the business

In-Depth Capital Investment Issues

- 8 C.F.R. 204.6(e):

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. . .

- You may see many different forms of a commercial enterprise being used. Aliens have established eligibility in the past through all of the entities listed above. The key is to look for evidence that the alien's personal capital is at risk.

- Cases have been seen with some of the following deficiencies:
 - Businesses that were single transaction entities (ie. one loan, one investment, etc) while the regulations require an investment in an “ongoing” business
 - Multiple businesses not united by a holding company or parent entity (often capital flows to entities which do not create jobs)
 - Aliens placing funds in non-profit entities

In-Depth Capital Investment Issues

- 8 C.F.R. 204.6(e):

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.

- You may see many different types of financial arrangements, some of which can be very complex involving multiple entities and varying levels of ownership. Therefore, it is important to focus on the basics: real capital being contributed to a real business. Capital cannot be provided by the alien in return for any kind of debt. However, you should note that an alien can contribute capital to a new commercial enterprise which then in turn loans out money.

(b)(5)

Business Plans

- Business plans are often submitted not only to show the need for employment as mentioned in the regulations, but also as blueprints for how the capital will be spent.
- This is important since you must ensure that all the capital will be available for job creation.
- Some will be many pages long and prepared by professionals in the industry, while others may be a brief written statement prepared by the petitioner.

Business Plans

- An EB5 comprehensive business plan is something between a prediction and a promise.
- The predictions should be made based on reasonable methodologies, and we need to hold the entities responsible for their promises to ensure all the capital is placed at risk and all the requisite employment is created.

Business Plans

- 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.”

- “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 therefore. Most importantly, the business plan must be credible.”

Evidence

- What can I expect to see?
- Everything from well-organized submissions of several key documents to ...

...buckets of company invoices, unrelated bank statements, newspaper clippings, website printouts, videos, samples of products, 100 page long partnership agreements, and almost anything else you can imagine.

- 8 CFR, 204.6(j) contains a list of evidence, but be aware that due to the nature of the cases and the wide possibilities for varying financial arrangements, you may need to review documents that are not on the list.

- 8 C.F.R. 204.6(j) :
- (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;

- 8 C.F.R. 204.6(j) (cont):
- (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;

- 8 C.F.R. 204.6(j) (cont):
- (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.

Escrow Agreements

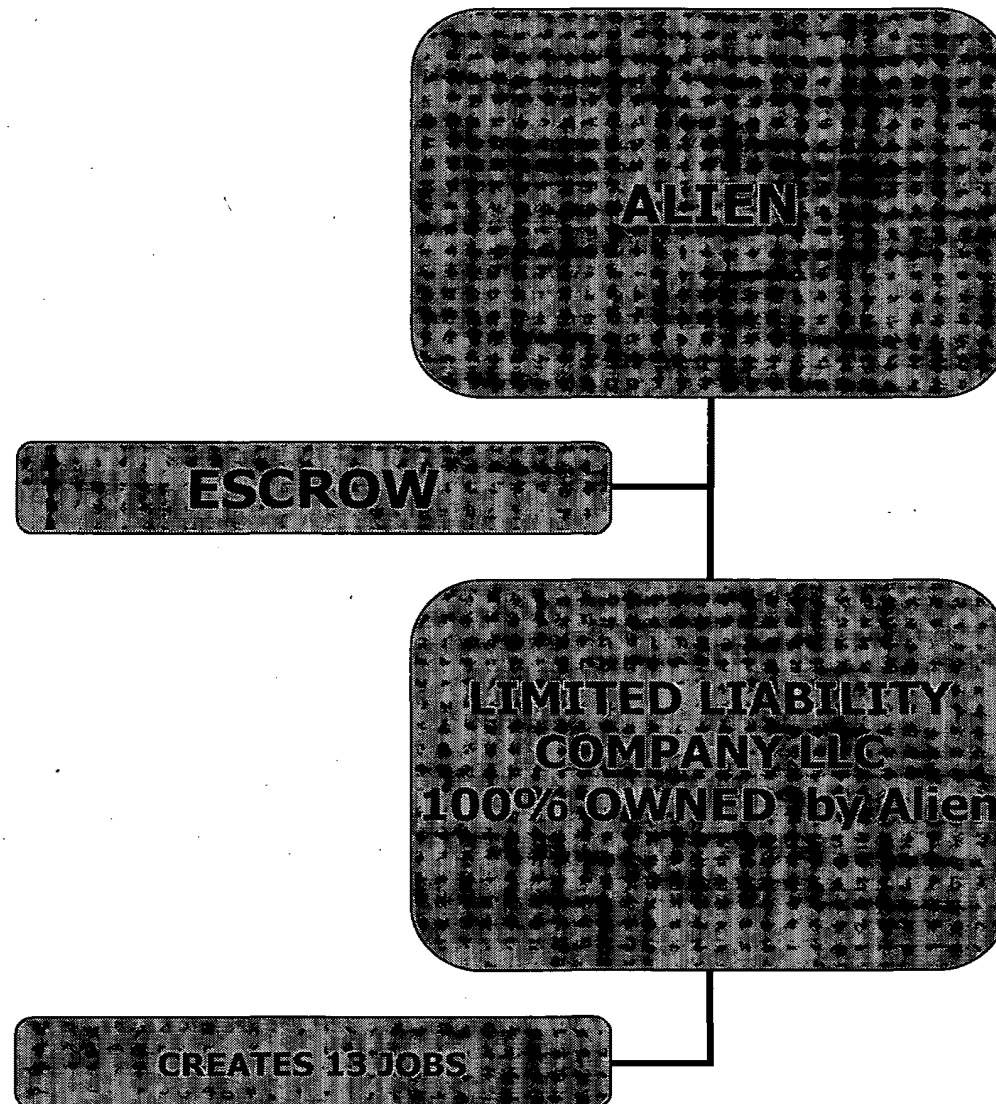
- **Funds Held in Escrow**
 - Title 8, Code of Federal Regulations, Section 204.6(j)(2) states:
 - To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required 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:
 -
 - (iv) Evidence of monies transferred or *committed to be transferred* to the new commercial enterprise. . . .
- (Emphasis added.)

Escrow Agreements

- Title 8 of the Code of Federal Regulations, section 204.6, does not directly address the use of an escrow prior to issuance of a visa. An escrow is a legal instrument that places the funds of one person (called the grantor, promisor, or obligor) in the hands of a third person (called the escrow holder) to be delivered to another party (called the grantee, promisee, or obligee) upon the occurrence of some event or meeting of some condition.
- For the purposes of the instant petition, an escrow must state that the required initial capital contribution is actually committed to the new commercial enterprise and made available for the purpose of job creation immediately and irrevocably upon approval of the petition and visa issuance, or adjustment. A mere statement that the funds are available from the escrow agent is not acceptable evidence of commitment.

- In order to decipher all this evidence, you don't need a degree in accounting – just some basic knowledge.
- Follow the money:
 - Where did it come from?
 - Where did it go?
 - What documents govern its use?
 - Is it being used for the benefit of the enterprise?
 - How are profits earned?

- Understand the underlying arrangement – make a diagram or flowchart.



2) Diagram this exercise for practice:

- In 2005 an alien invests \$1,000,000 in International Fracture Technologies, LLC. (IFT) which has had 4 employees since 1989.
- IFT owns 100% of Tripe North America, Ltd. Partnership (TNA); 100% of Borgman Flash Digttools, Inc. (BFD); and 50% of Green Card America, LLC (GCA). Each had 12 employees before the investment and has added one full-time employee since, except for TNA which now has 21.
- BFD owns 60% of Adventure Gear Plus, Inc. (AGP) which has six retail stores and 300 employees.
- IFT purchased \$3,500,000 in inventory for AGP.
- Compare your diagram with those of your classmates.
What concerns if any do you have about the investment?

3) Diagram this exercise for practice:

- An alien along with 29 other alien investors places \$500,000 with an escrow company for later release to Happy Elegance, Ltd. Partnership (HELP) upon approval of the I-526 petition.
- HELP has 2 employees and loans the capital to Cheney Biofuel, LLC, which owns 100% of Cheney Biofuels, Inc.
- According to the business plan, \$14 million is to be used for constructing new facilities in a targeted area, while \$1,000,000 is to be placed in a securities account owned by HELP.
- Cheney Biofuels, LLC will lease the facility to Cheney Biofuels, Inc., which will relocate 300 jobs there.
- Cheney Biofuel, LLC, is owned 50% by one individual and 50% by another unnamed limited liability company.
- Compare your diagram with those of your classmates.
What concerns if any do you have about the investment?

Typical Documents

- Some of the typical controlling documents you might encounter with many current Regional Center cases:
 - Escrow Agreement – Allows alien to place funds at risk in the hands of a third party who will deliver the capital to the enterprise.
 - Subscription Agreement – Alien agrees to partake in investment.
 - Loan Agreement – Enterprise agrees to loan alien capital to job creating entity.
 - Partnership Agreement – Sets forth terms of all transactions between General Partner, Limited Partners (aliens), and partnership.

(b)(5)

(b)(5)

- It may also be necessary to calculate the exchange rates between countries. Many websites contain currency exchange calculators, but the one at www.oanda.com is very helpful as it can retrieve historical data.
- You may be given an exchange rate and have to calculate the currency. For example, how would you calculate the value of \$10,000 USD in Euros if the rate is \$1 USD to .64 Euros?
 - ✓ Multiply 10,000 x .64 to get 6,400 Euros.
- How would you calculate the amount of US dollars equal to 3,440,360 Chinese Renminbi (yuan) if the rate is \$1 USD to 6.88 Renminbi?
 - ✓ Divide 3,440,360 by 6.88 to get \$500,052 USD.

(b)(5)

(b)(5)

Bankruptcy & Ceasing Operations

- Bankruptcy law provides for the development of a plan that allows a debtor, who is unable to pay his creditors, to resolve his debts through the division of his assets among his creditors. This supervised division also allows the interests of all creditors to be treated with some measure of equality. Certain bankruptcy proceedings allow a debtor to stay in business and use revenue generated to resolve his or her debts. An additional purpose of bankruptcy law is to allow certain debtors to free themselves (to be discharged) of the financial obligations they have accumulated, after their assets are distributed, even if their debts have not been paid in full.
- Bankruptcy law is federal statutory law contained in Title 11 of the United States Code.
- Bankruptcy proceedings are supervised by and litigated in the United States Bankruptcy Courts. These courts are a part of the District Courts of The United States.

- There are two basic types of Bankruptcy proceedings. A filing under Chapter 7 is called liquidation. It is the most common type of bankruptcy proceeding. Liquidation involves the appointment of a trustee who collects the non-exempt property of the debtor, sells it and distributes the proceeds to the creditors.
- Bankruptcy proceedings under Chapters 11, 12, and 13 involve the rehabilitation of the debtor to allow him or her to use future earnings to pay off creditors. Under Chapter 7, 12, 13, and some 11 proceedings, a trustee is appointed to supervise the assets of the debtor.

- A bankruptcy proceeding can either be entered into voluntarily by a debtor or initiated by creditors. After a bankruptcy proceeding is filed, creditors, for the most part, may not seek to collect their debts outside of the proceeding. The debtor is not allowed to transfer property that has been declared part of the estate subject to proceedings. Furthermore, certain pre-proceeding transfers of property, secured interests, and liens may be delayed or invalidated. Various provisions of the Bankruptcy Code also establish the priority of creditors' interests.

Trusts

- A **trust** is an arrangement whereby property is managed by one person (or persons, or organizations) for the benefit of another.
- A trust is created by a **settlor**, who entrusts some or all of his or her property to people of his choice (the **trustees**). The trustees hold legal title to the *trust property*, but they are obliged to hold the property for the benefit of one or more individuals or organizations (the **beneficiary**).

- The trust is governed by the terms of the trust document, which is usually written and in deed form. It is also governed by local law. The **settlor** is also called the **trustor, grantor, donor, or creator**.
- The beneficiaries are beneficial (or **equitable**) owners of the trust property. Either immediately or eventually, they will receive income from the trust property or they will receive the property itself. The extent of an individual beneficiary's interest depends on the wording of the trust document. One beneficiary may be entitled to income (*for example, interest from a bank account*), whereas another may be entitled to *the entirety of the trust property when he turns 25*).

- *Common purposes for trusts include:*
- **Privacy**
- **Spendthrift Protection**
- **Wills and Estate Planning**
- **Charities**
- **Unit Trusts (an investment vehicle)**
- **Pension Plans**
- **Corporate Structures**
- **Asset Protection**
- **Tax Planning**
- **Co-ownership**
- **Tax Evasion**
- **Money Laundering**

Discussion Questions

- *Are there problems or concerns with the following scenarios in regards to EB5?*
 1. An alien places capital in a charitable trust which creates 10 new jobs.
 2. An alien's grandparents place \$5,000,000 in a trust for him. The trust invests \$1,000,000 in a legitimate investment.
 3. An alien claims that his father gave him a gift of \$1,000,000 which was obtained from the sale of real property in Colorado worth \$3,500,000 that the father paid for from his \$19,000 per year salary.
 4. An alien claims his capital was obtained through his mother's café business in the UK which owns a 50% interest in a Cayman Island Ltd. Partnership. The partnership wired \$500,000 to his uncle's fish market in Florida which in turn wired the funds to a legitimate EB5 business.

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- Helpful Reminders:

- Diagram complex arrangements.
- Ask for written explanations to accompany documents you don't understand.
- Ask for written explanations and evidence to clear up contradictions.
- Follow monetary funds through each transaction.
- We are not performing IRS audits of the capital, but we do need to track the path of the capital to make sure that it belongs to the petitioner.

THE END

BASIC FORM I-526 ADJUDICATION ISSUES

REVIEWING FORM I-526

- Review the form for the normal requirements (ie. name, fee, signature, etc.)
- Note the Current Nonimmigrant Status
 - If the alien is out of status, is he/she claiming that the funds were earned in the US?
- Note the box marked at Part 2
 - An investment in a targeted area lowers the threshold to \$500,000.
- Note the details about the business
 - What type of business is it?
 - Where is it?
 - How is it organized?
 - Was it established after Nov. 29, 1990?
 - Be on the lookout for conflicting information as you examine the file further.

REVIEWING FORM I-526 (cont.)

- Note the information at Part 3, especially the total capital investment to date.
 - Has enough time passed since the investment for tax returns to be due?
 - Has less than the required amount of capital been invested?
 - If the alien owns less than 100%, are there other alien investors or perhaps other aspects that need to be examined further?
 - If the investment is in a targeted area, don't forget to verify.
- Note the type of enterprise at Part 4. How is it "new?" Does it conform to 8 CFR, 204.6(h)(1), (2), or (3)?
 - New commercial enterprise resulting from the creation of a new business. ("NEW" - See 204.6(h)(1))
 - New commercial enterprise resulting from the purchase of an existing business. ("REORGANIZATION/RESTRUCTURING" - See 204.6(h)(2))
 - New commercial enterprise resulting from a capital investment in an existing business. ("EXPANDED" - See 204.6(h)(3))
- Note the remaining financial information, but be aware that these figures may vary.

REVIEWING FORM I-526 (cont.)

- Note the number of full-time employees claimed at Part 5.
- Were there employees before the investment was made? What will you need to see?
- If all the positions have been created, what will you look for?
- If there are still positions that must be created, what must they submit?
- Is the salary so high that it might constitute a return of the alien's capital?
- Note at Part 6 whether the alien wishes to file an adjustment of status in the US or to adjust abroad if the case is approved.
- Be aware of the additional attestations regarding whether the alien is in proceedings, etc.

UPDATING

- Updating of the Form I-526 in CLAIMS LAN is similar to other updating.
- [F10] allows for entries regarding approvals, RFE's, denials, etc.
- Approvals will require entries regarding:
 - 1.) adjustment via an I-485 or through the consulate overseas (NVC).
 - 2.) status codes (**T51** - \$500,000 investment in targeted area; **C51** - \$1,000,000 investment in non-targeted area; **I51** – Regional Center investment.)
 - 3.) Priority date (filing date).

EB5 Adjustment Codes

C51	203(b)(5)(A) EMP NTA PRINCIPAL
C52	203(b)(5)(A) SPOUSE OF C51
C53	203(b)(5)(A) CHILD OF C51
C56	203(b)(5)(A) EMP NTA PRINCIPAL
C57	203(b)(5)(A) SPOUSE OF C56
C58	203(b)(5)(A) CHILD OF C56
T51	203(b)(5)(B) EMP CR TRGT AREA
T52	203(b)(5)(B) SPOUSE OF T51
T53	203(b)(5)(B) CHILD OF T51
T56	203(b)(5)(B) EMP CR TRGT AREA
T57	203(b)(5)(B) SPOUSE OF T56
T58	203(b)(5)(B) CHILD OF T56
I51	INV PILOT PRO PRIN ADM-TARGET
I52	INV PILOT PRO SPOUS ADM-TARGET
I53	INV PILOT PRO CHILD ADM-TARGET
I56	INV PILOT PRO PRIN ADJ-TARGET
I57	INV PILOT PRO SPOUS ADJ-TARGET
I58	INV PILOT PRO CHILD ADJ-TARGET
R51	INV PILOT PRO PRIN ADM-NON-T
R52	INV PILOT PRO SPOUSE ADM-NON-T
R53	INV PILOT PRO CHILD ADM-NON-T
R56	INV PILOT PRO PRIN ADJ-NON-T
R57	INV PILOT PRO SPOUSE ADJ-NON-T
R58	INV PILOT PRO CHILD ADJ-NON-T
E51	203(b)(5)(A) EMP CR NO TGT ARE
E52	203(b)(5)(A) SPOUSE OF E51
E53	203(b)(5)(A) CHILD OF E51
E56	203(b)(5)(A) EMP CR NO TGT ARE
E57	203(b)(5)(A) SPOUSE OF E56
E58	203(b)(5)(A) CHILD OF E56

BASIC FILE REVIEW TECHNIQUES

- Start with the basics:
 - Real Business?
 - Real Investment?
 - Real Job Creation?
- Follow the regs. Does the evidence demonstrate:
 - a "new" commercial enterprise?
 - the required amount of the alien's personal capital at risk?
 - the lawful source of the capital?
 - the job creation?
- Take notes while you review. Make flowcharts if it helps you follow the capital.
- Find out:
 - Who are the parties involved? (Alien, Partnership, Corporation, etc?)
 - What documents govern the relationships? (Partnership Agreements, loan documents, Subscription Agreements, etc?)
 - What evidence demonstrates eligibility of the major requirements?

7

Requests for Additional Evidence (RFE)

- Due to the complex nature of EB5 cases and the potential for so many variations in financial arrangements, RFE's are commonly necessary.
- RFE's should normally adhere to local standards and practices in your office.
- EB5 RFE's should clearly and concisely ask for evidence which can demonstrate compliance with the statutory and regulatory requirements.
- Start with the basic requirements of the issue, and then add language to clarify the request if necessary.
- For example, don't simply ask for "tax returns." Specify which years and which entities are involved. Do you want personal returns or business returns? Which business? There may be several referenced in the evidence. Do you want foreign tax returns with translations? What if a tax return is not yet due? Is there other evidence that can be substituted?
- Think about why you are asking for specific evidence and don't assume the alien knows why you need it. Is the tax return needed to demonstrate lawful source of funds, the amount of wages paid, or that an investment was made?

Take a look at RFE Template #1. This RFE is useful when little evidence is presented. You may also use it as a basis for constructing a more detailed RFE.

Other tips:

- Divide the issues up separately and use headings to help clarify. Avoid tackling complex issues in the same paragraph.
- Sometimes it is useful to mention some of the documents submitted and explain why they are not sufficient. For example, if an investment was claimed to have been made in 2007 and 2008, yet the alien provides only bank statements from 2008, it might help to clarify your request.

- When appropriate suggest varying options. A certain year's tax return might not be due, thus requiring you to ask for some other relevant evidence such as an audited financial statement containing much the same information. A Form W-2 might contain an amount of wages which does not appear to be enough for a full-time employee if that employee was hired late in the year, thus requiring you to examine other evidence such as quarterly employment reports.
- The burden of proof is on the petitioner. If you don't understand something, don't pretend. Ask for written clarification or an explanation which you can understand. If you are still not satisfied after getting a response, consider denying the case.

THE END

In-Depth Lawful Source of Capital Issues

1

In-Depth Capital Investment Issues

8 C.F.R. 204.6(j)(3):

- (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.

- The types of evidence listed at 8 C.F.R. 204.6(j)(3) are of great assistance in determining whether the alien's capital was obtained lawfully, but you are not limited to asking for just those specific items.
- Foreign business registration records let you know about the business activities of the alien, but they do not prove that all of his capital was from those business activities.
- The paragraph which references tax returns stipulates all the different types of returns that might be available and which might assist you in making a determination. Note that personal and business returns are mentioned. Returns from the last five years should in most cases demonstrate the level of income of an individual, but there may be situations in which an alien obtained the capital in one transaction or earned adequate income in just one year.

- Evidence identifying any other source(s) of capital can refer to evidence of any other kind including documents showing capital accumulated over time in bank or investment accounts, documents showing the sale of assets, documents regarding inheritances or gifts, and many other sources of capital.
- Judgments or evidence of all pending civil or criminal actions are sometimes seen, but not often. This type of evidence is more likely to be provided if there are actions against the alien of which the Service is already aware and the Service specifically requests evidence about them.

(b)(5)

(b)(5)

- An alien may claim that certain assets were liquidated or sold, but fail to provide proof of how the assets were obtained in the first place. *IF THE ASSETS WERE ACQUIRED RECENTLY, ASK FOR EVIDENCE OF HOW AND WHEN THEY WERE OBTAINED.*
- An alien may claim that the capital was earned over many years, but be unable to show the presence and accumulation in accounts. *ASK FOR SAMPLE ACCOUNT STATEMENTS WHICH SHOW THE ACCRUAL OF CAPITAL.*

- An alien may show verifiable income over the years at or near the investment amount, but fail to account for the fact that personal living expenses were also incurred and must also have also been paid for (ie. earned \$550,000 from 1998 – 2008, but was \$50,000 enough to pay for 10 years of expenses?). *POINT OUT THE NEED TO DEMONSTRATE ADEQUATE EARNINGS TO ACCOUNT FOR THE CAPITAL.*
- An alien may use funds that come from offshore accounts in tax haven countries. *PUT THE ONUS ON THE ALIEN TO DEMONSTRATE THE FULL PATH OF THE CAPITAL.*

(b)(5)

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- ❖ The Bank Secrecy Act (1970) basically eliminates all anonymous banking in the United States. It gives the Treasury Department the ability to force banks to keep records that make it easier to spot a laundering operation. This includes reporting all single transactions above \$10,000 and multiple transactions totaling more than \$10,000 to or from a single account in one day. A banker who consistently violates this rule can serve up to 10 years in prison.
- ❖ The 1986 Money Laundering Control Act makes money laundering a crime in itself instead of just an element of another crime, and the 1994 Money Laundering Suppression Act orders banks to establish their own money-laundering task forces to weed out suspicious activity in their institutions. The 2001 U.S. Patriot Act sets up mandatory identity checks for U.S. bank patrons and provides resources toward tracking transactions in the underground/alternative banking systems frequented by terrorist money handlers.

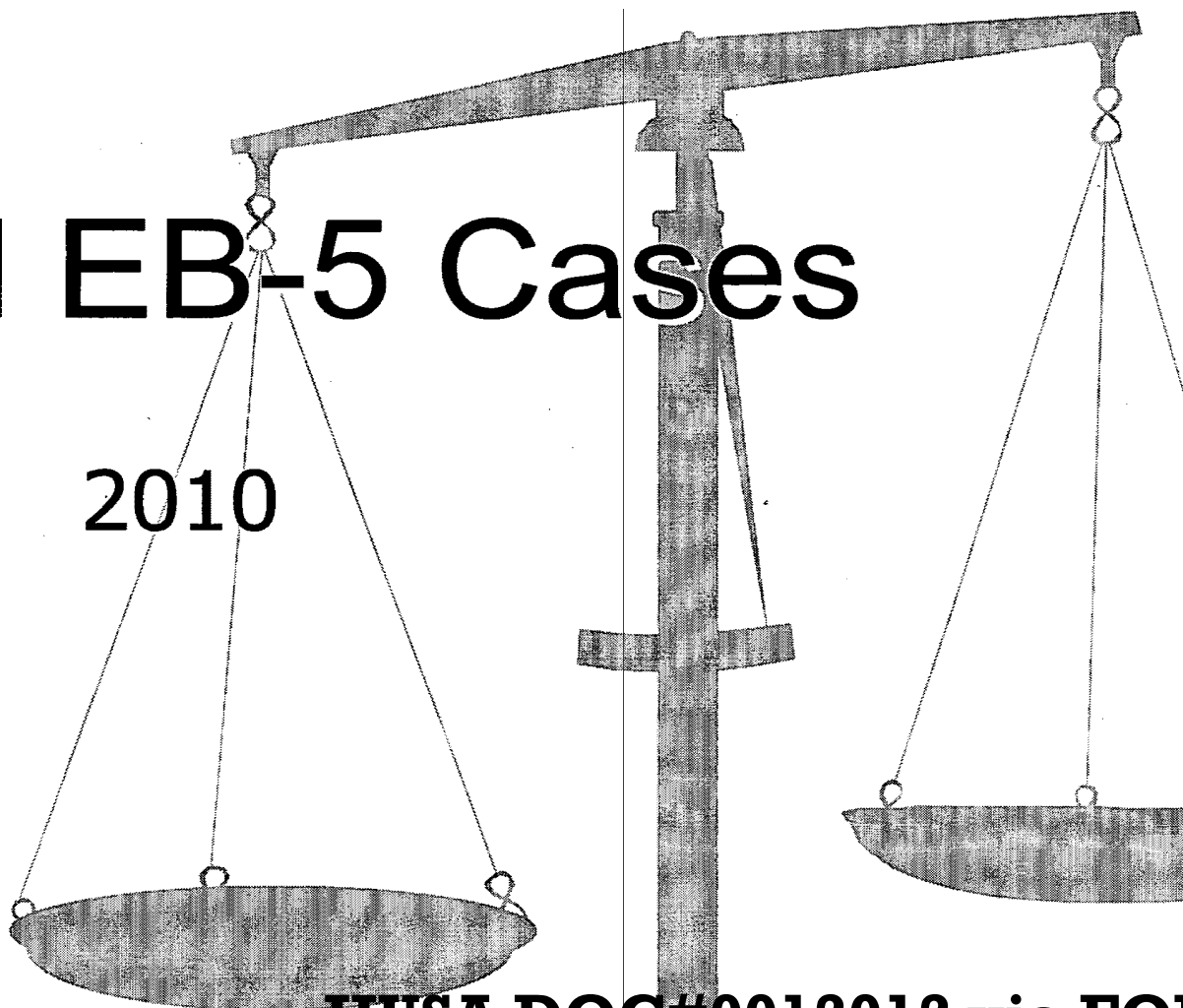
- Reminders:

- Although you are not performing an audit of every penny of the alien's capital, it is important that you satisfy yourself that all the capital was lawfully obtained.
- Each case is different, and may require a different approach and varying evidence.
- Rely on tax returns, account statements, business activity, and/or other probative evidence as opposed to self-serving statements.

THE END

Federal EB-5 Cases

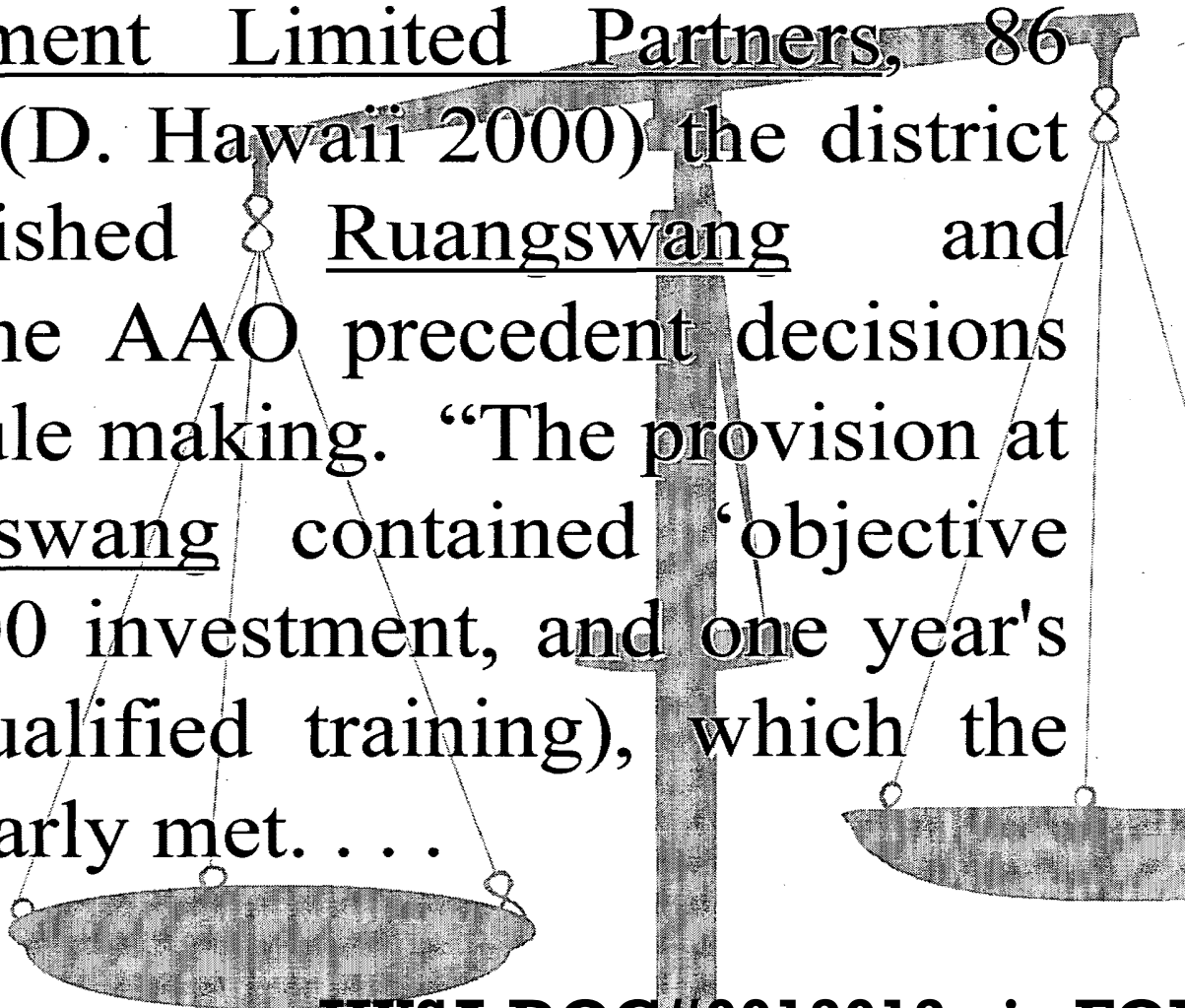
2010



IIUSA DOC#0012012 via FOIA
(Pub: 2/24/12) - www.iiusa.org

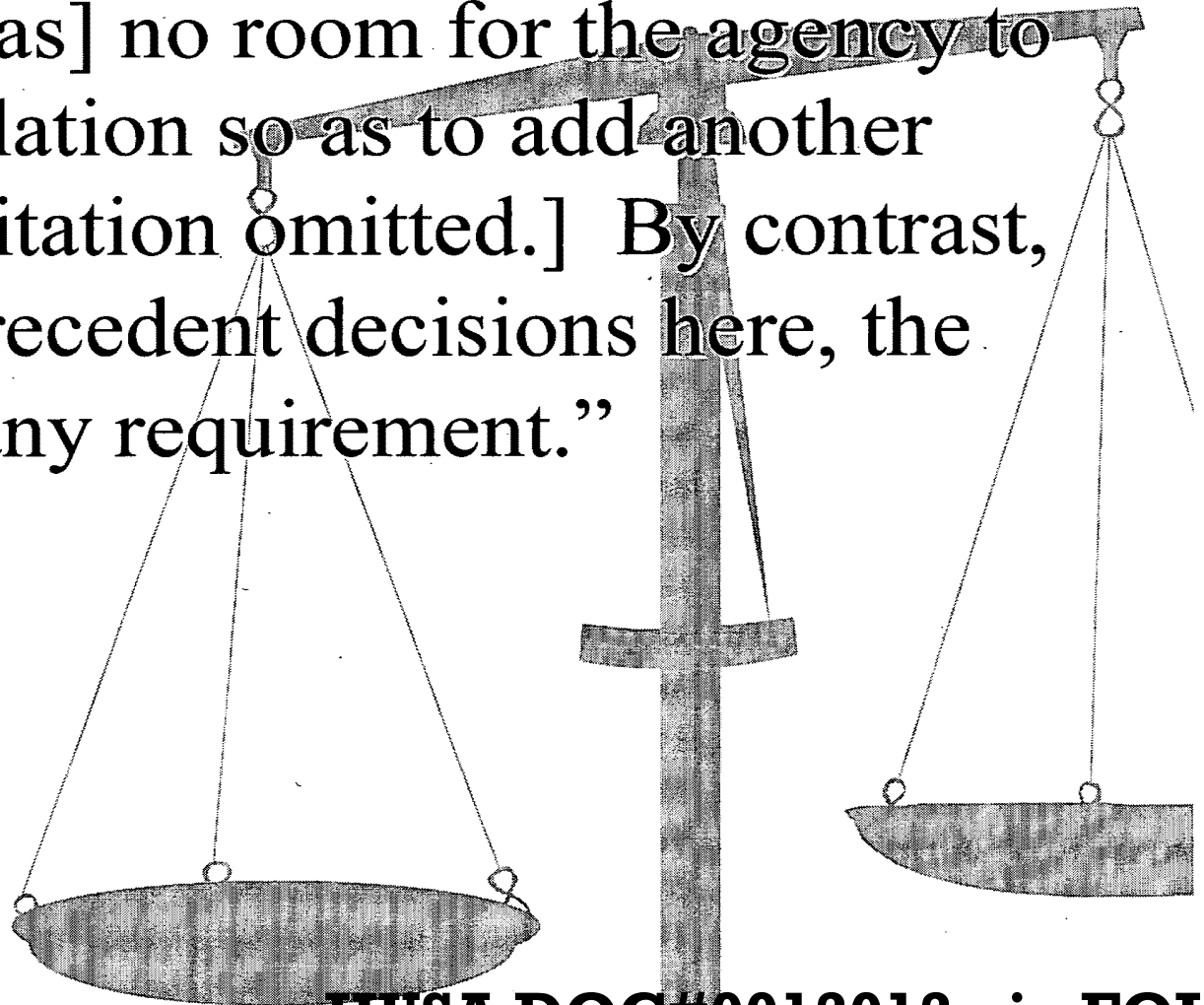
Upholding the AAO Precedent Decisions

- In R.L. Investment Limited Partners, 86 F.Supp.2d 1014, (D. Hawaii 2000) the district court distinguished Ruangswang and concluded that the AAO precedent decisions did not involve rule making. “The provision at issue in Ruangswang contained ‘objective criteria (a \$10,000 investment, and one year's experience or qualified training), which the petitioner had clearly met. . . .”



R.L.I.P. cont.

- There ‘simply [was] no room for the agency to interpret the regulation so as to add another requirement.’ [Citation omitted.] By contrast, in applying the precedent decisions here, the INS did not add any requirement.”



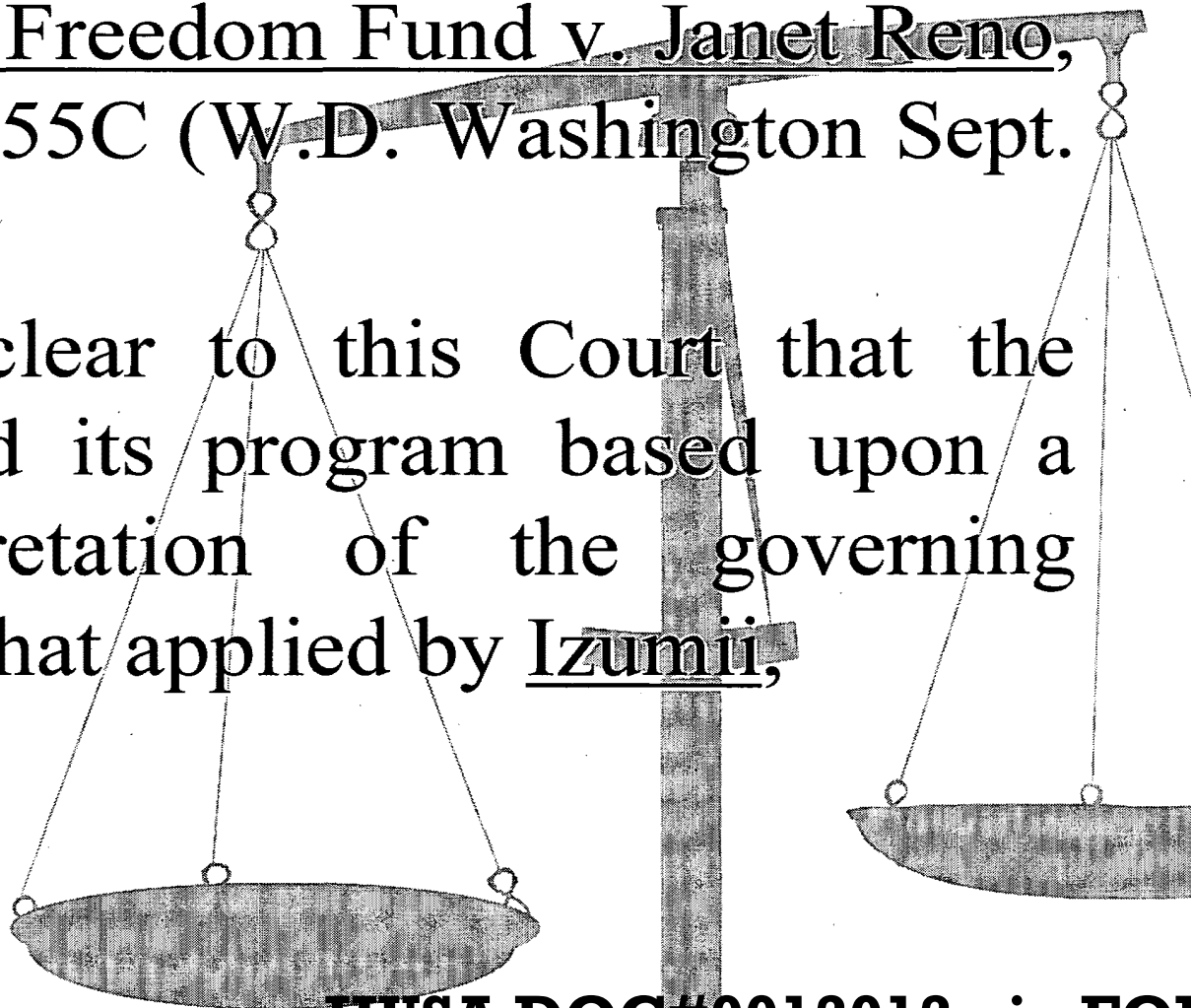
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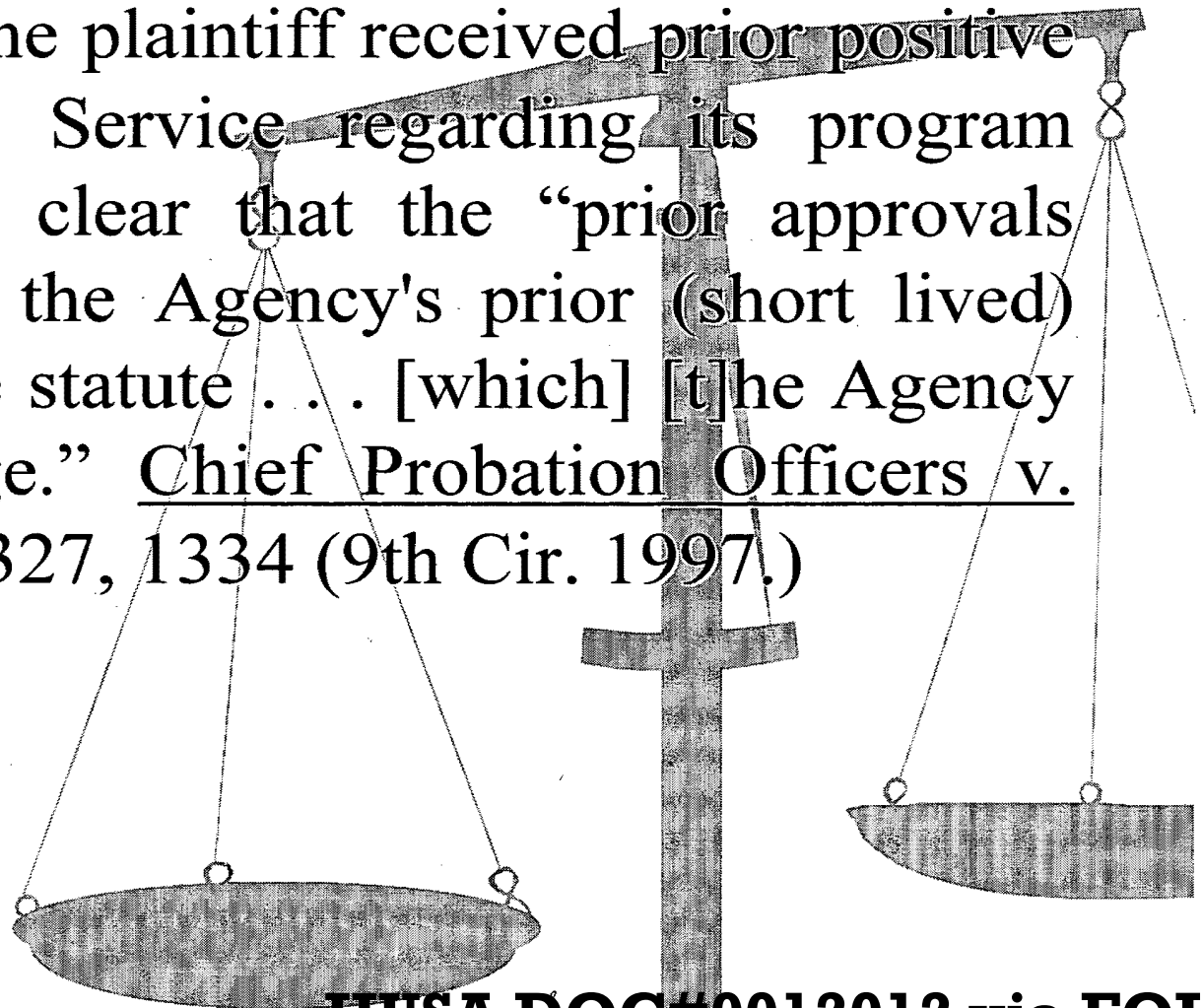
Golden Rainbow

- Golden Rainbow Freedom Fund v. Janet Reno, Case No. C99-0755C (W.D. Washington Sept. 14, 2000).
- Although it is clear to this Court that the plaintiff designed its program based upon a different interpretation of the governing regulations than that applied by Izumii,



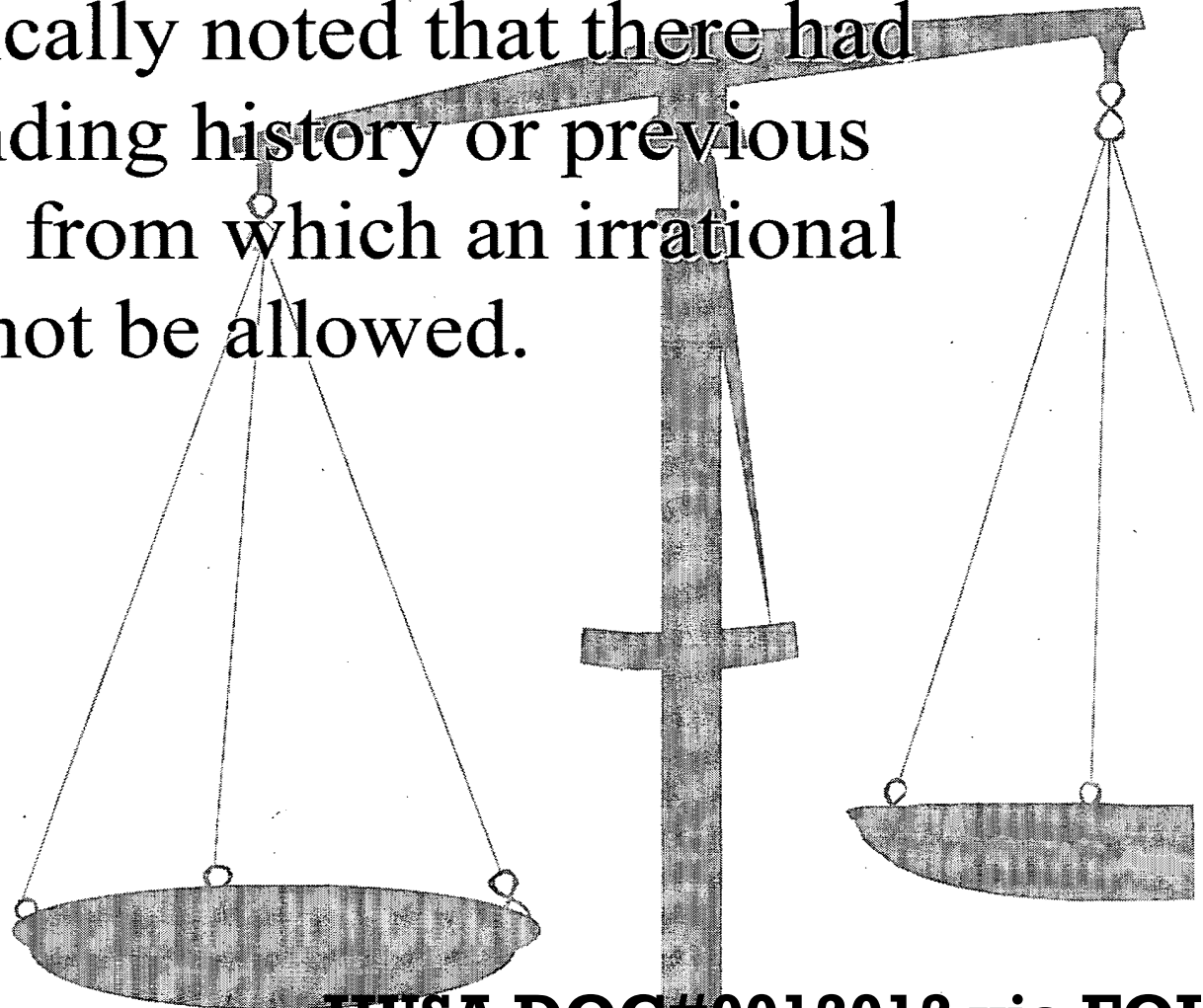
Golden Rainbow cont.

- . . . and although the plaintiff received prior positive feedback from the Service regarding its program design, the law is clear that the “prior approvals simply represented the Agency's prior (short lived) interpretation of the statute . . . [which] [t]he Agency was free to change.” Chief Probation Officers v. Shalala, 118 F.3d 1327, 1334 (9th Cir. 1997.)



Golden Rainbow cont.

- That court specifically noted that there had been no long-standing history or previous binding decisions from which an irrational departure would not be allowed.

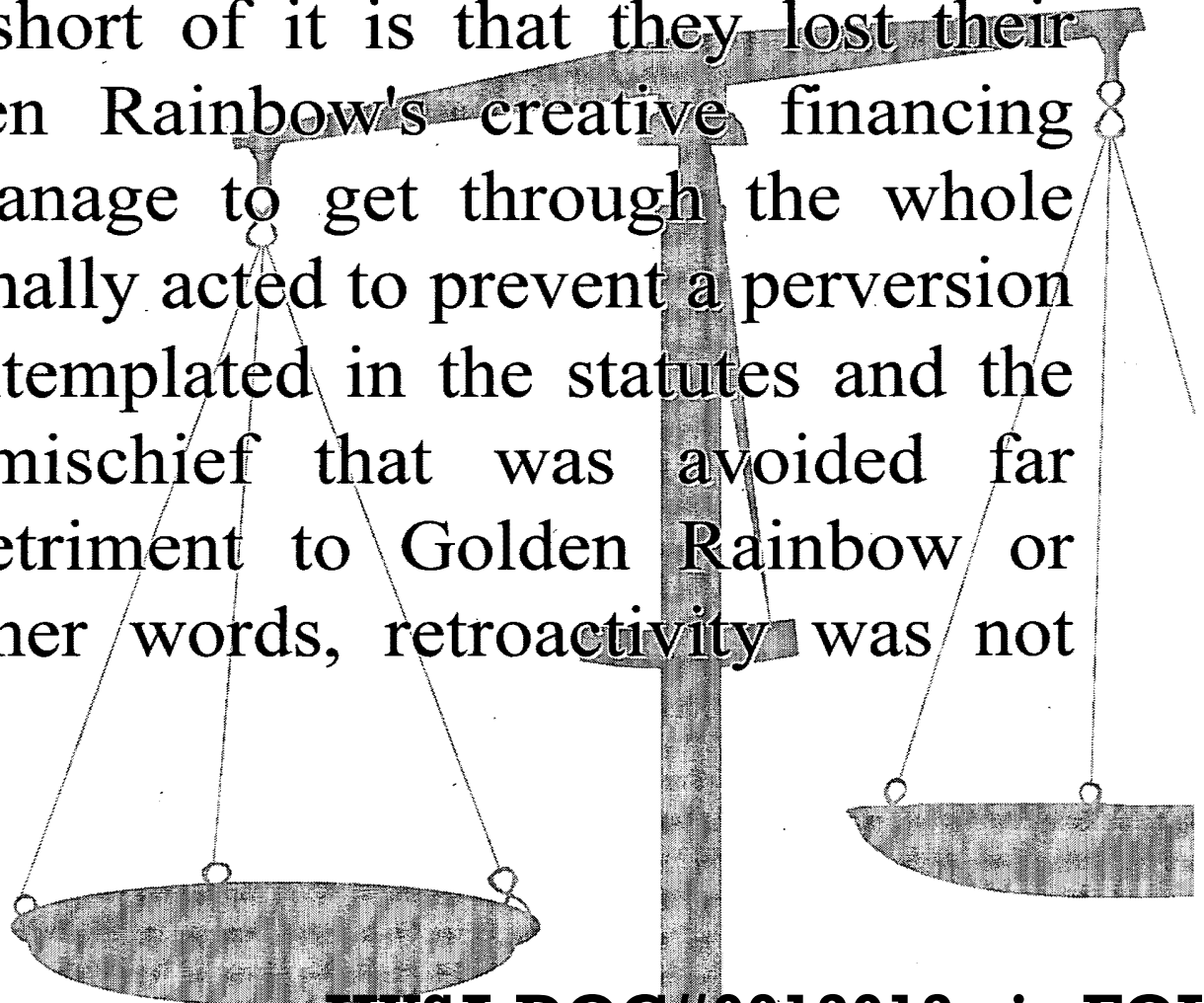


Golden Rainbow II

- Golden Rainbow Freedom Fund v. John Ashcroft, No. 00-36020 (9th Cir. Nov. 26, 2001).
- “No doubt, Golden Rainbow and the alien investors did rely on the non- precedential position of the INS, and may suffer on that account. But there had been no formal determination at the time, and they had to know that any initial approval was conditional. There could be no closure until there had been a second petition for removal of the condition, and a showing of compliance was required at that time. See 8 U.S.C. § 1186b(c)(1) & (d)(1). . . .

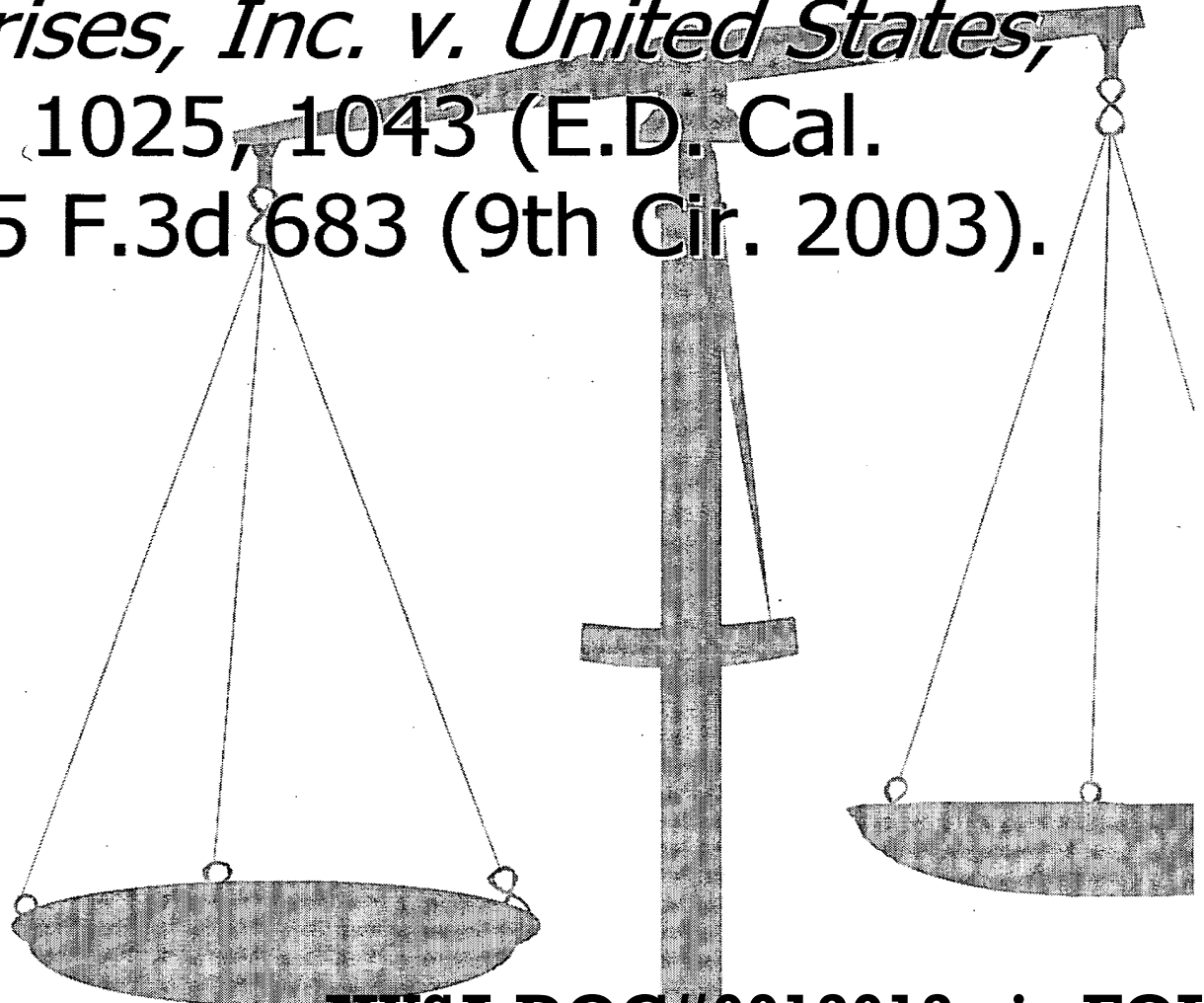
Golden Rainbow II cont.

- . . .The long and short of it is that they lost their gamble that Golden Rainbow's creative financing approach would manage to get through the whole process. The INS finally acted to prevent a perversion of the program contemplated in the statutes and the regulations. The mischief that was avoided far outweighed any detriment to Golden Rainbow or anyone else. In other words, retroactivity was not inappropriate."



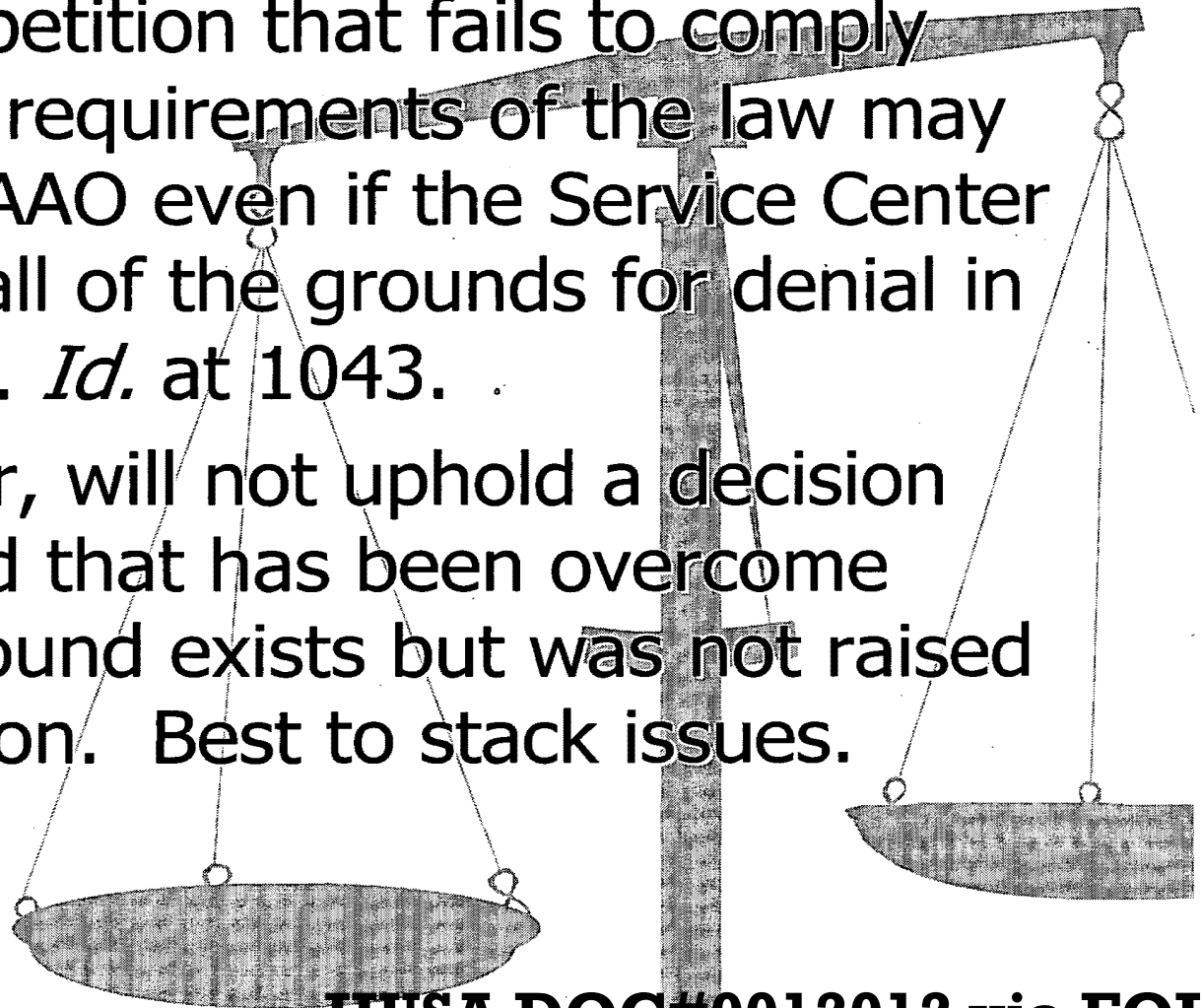
Specific EB-5 Requirements

- *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).



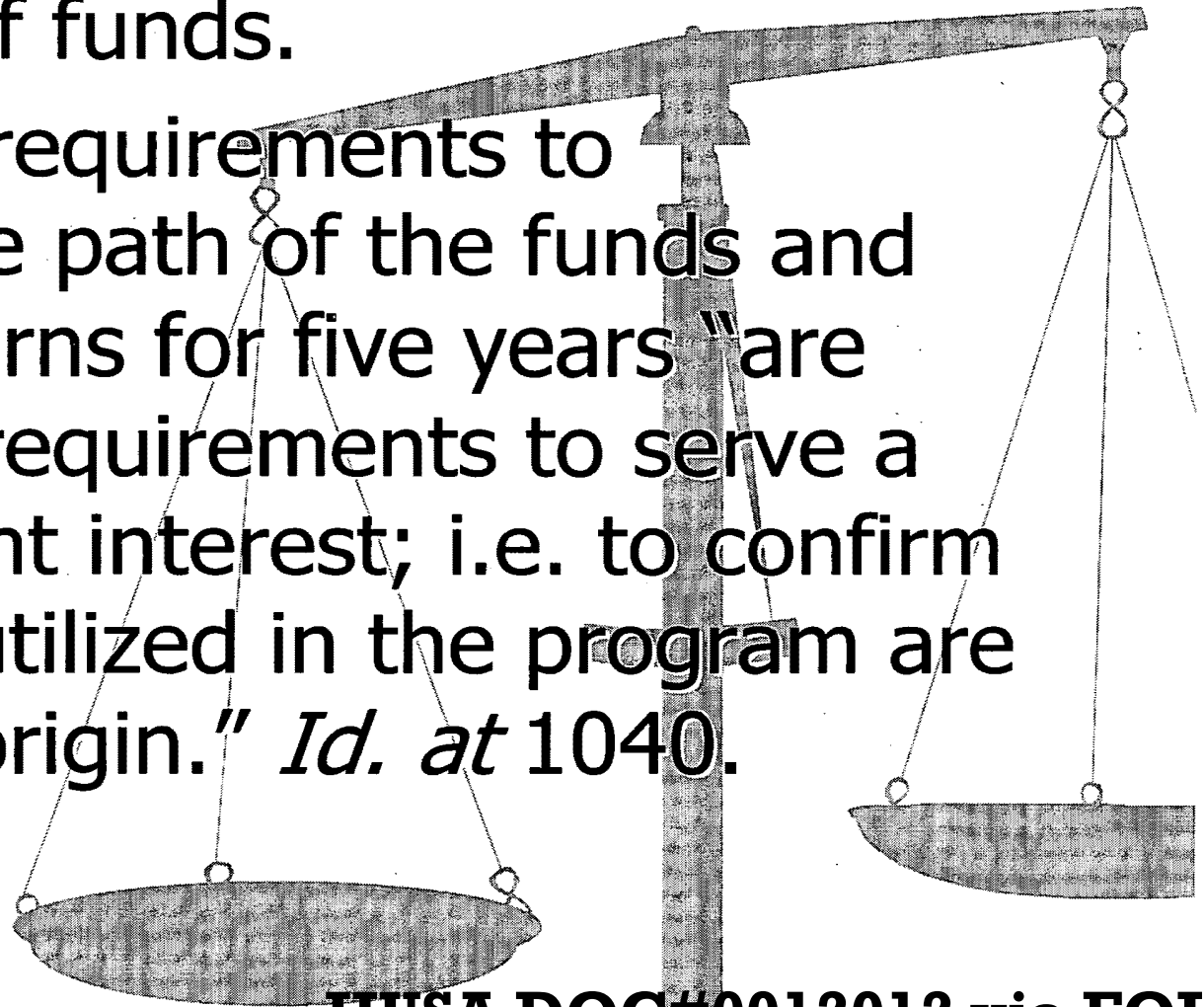
Spencer (cont.)

- An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *Id.* at 1043.
- The AAO, however, will not uphold a decision based on a ground that has been overcome where another ground exists but was not raised in the initial decision. Best to stack issues.



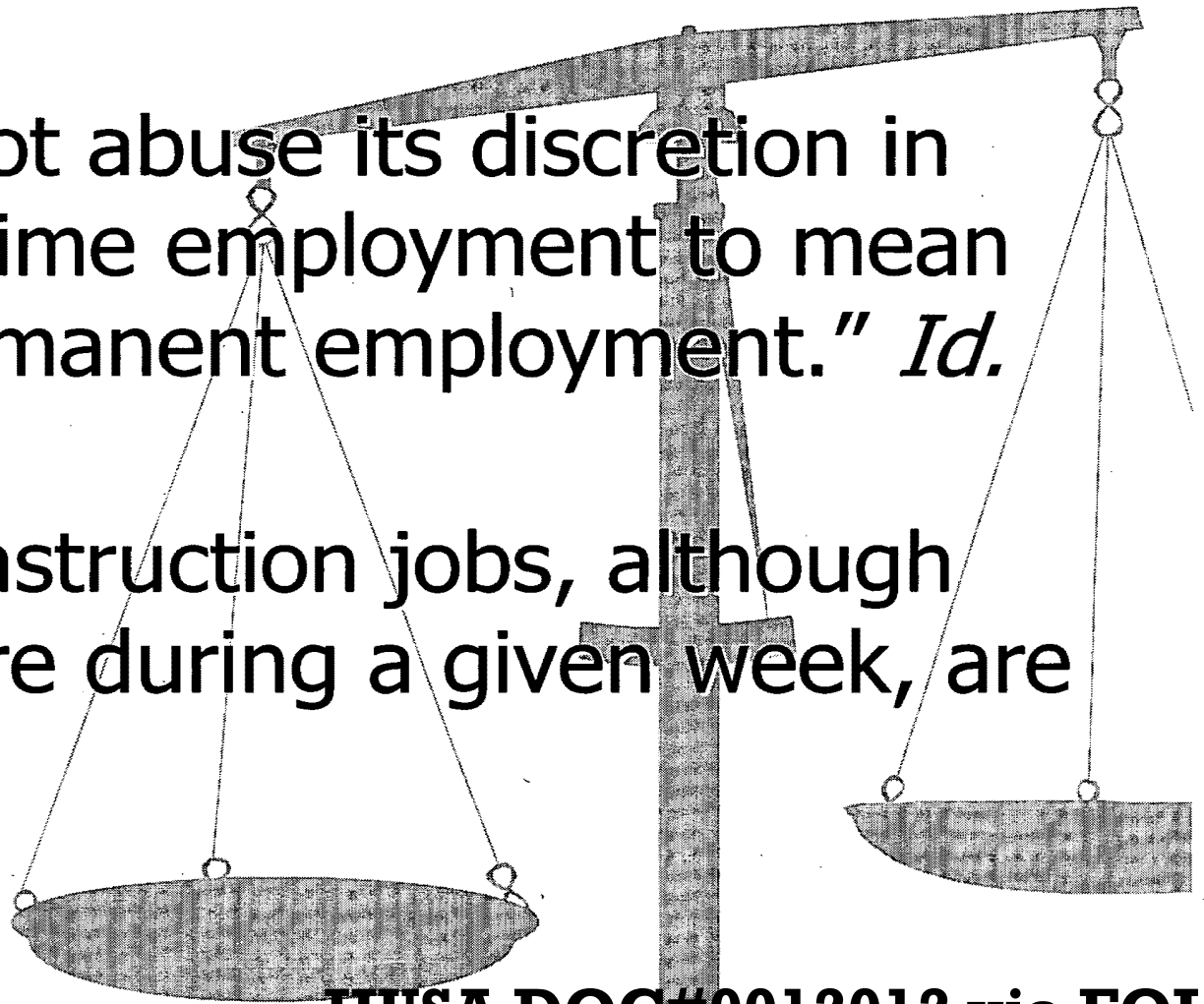
Spencer (cont.)

- Lawful source of funds.
- The regulatory requirements to demonstrate the path of the funds and provide tax returns for five years "are hypertechnical requirements to serve a valid government interest; i.e. to confirm that the funds utilized in the program are not of suspect origin." *Id. at 1040.*



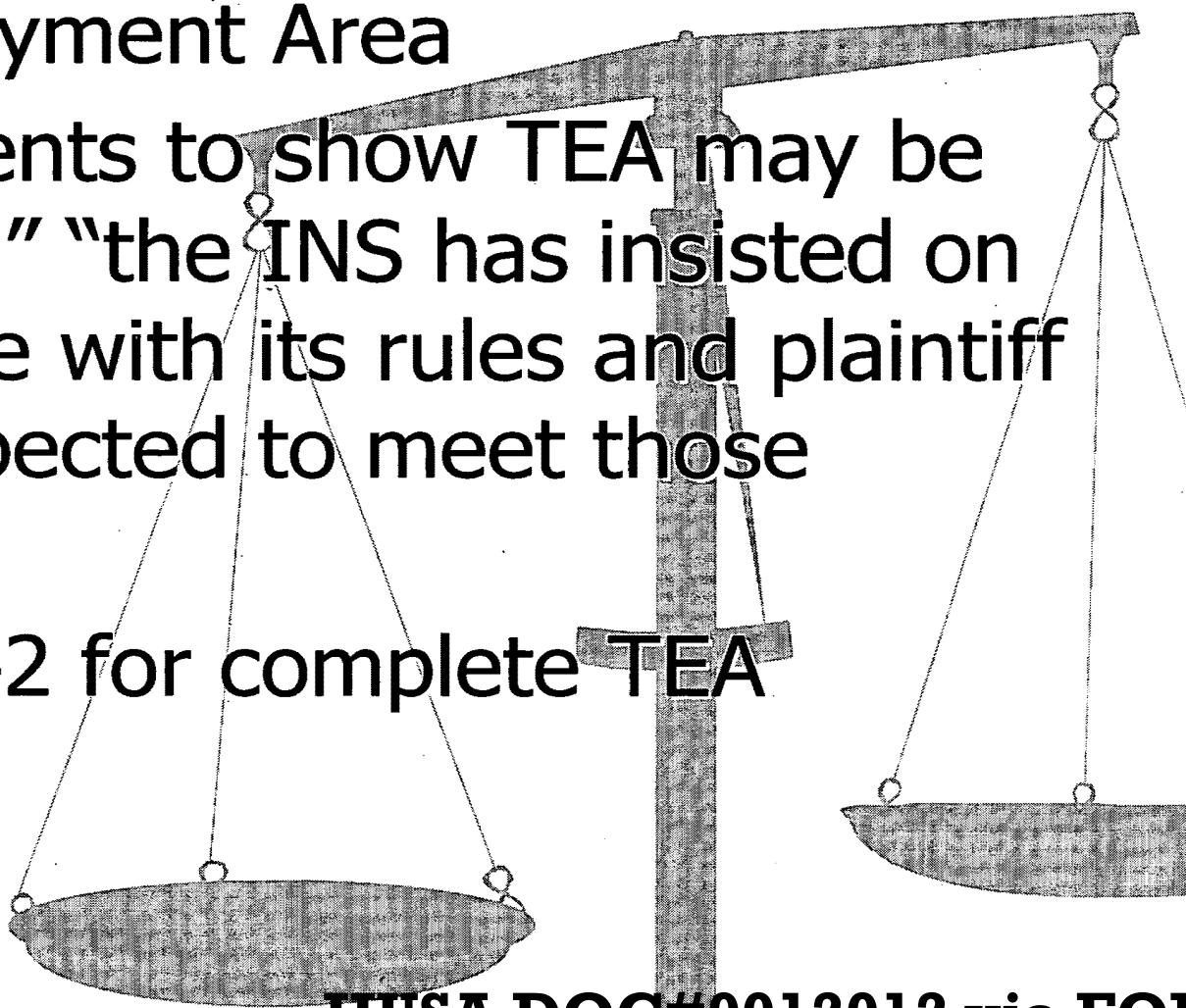
Spencer (cont.)

- Employment
- "The AAO did not abuse its discretion in construing full-time employment to mean continuous, permanent employment." *Id.* at 1039.
- Intermittent construction jobs, although 35 hours or more during a given week, are not qualifying.



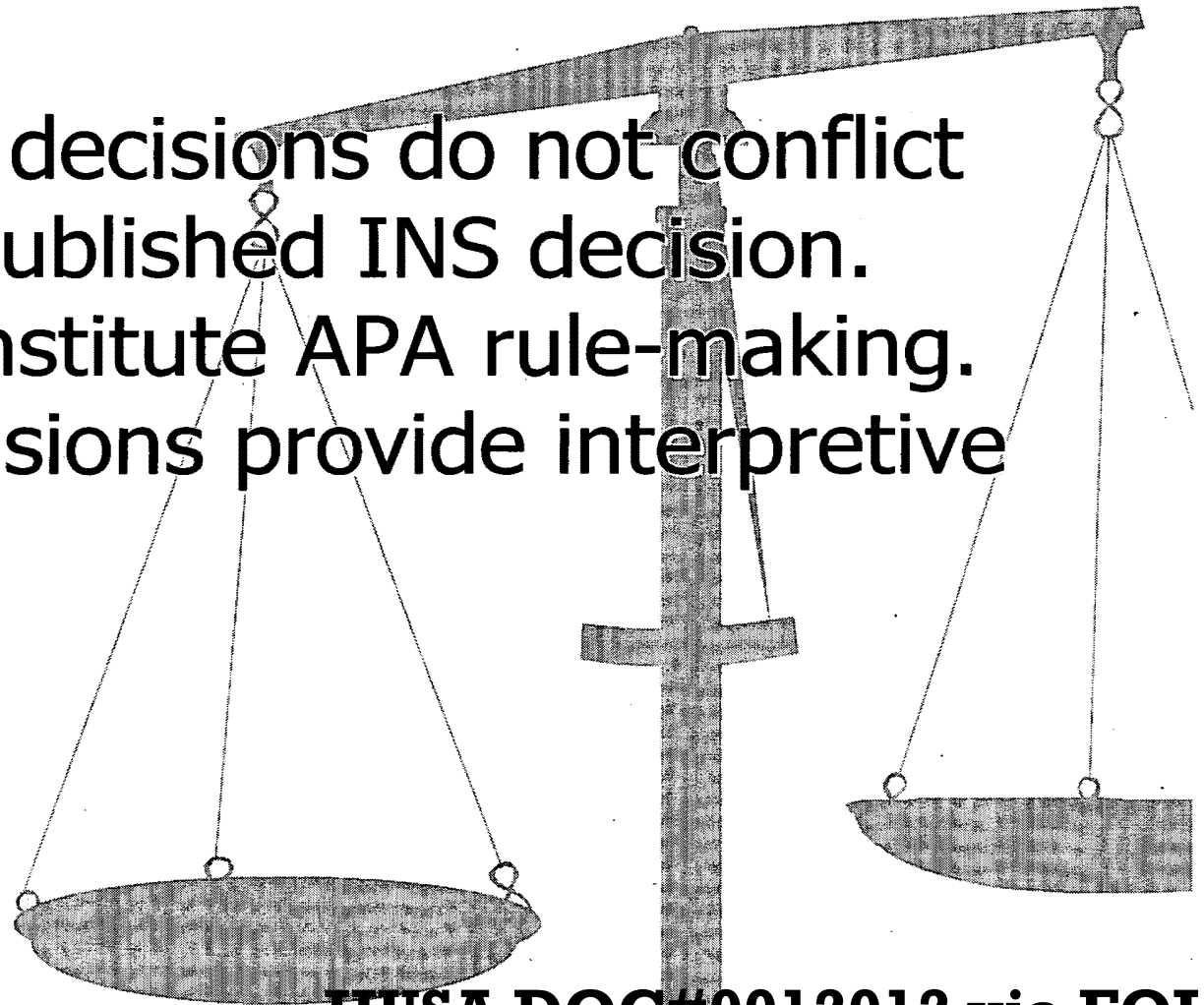
Spencer (cont.)

- Targeted Employment Area
- While requirements to show TEA may be "hypertechnical," "the INS has insisted on strict compliance with its rules and plaintiff should have expected to meet those requirements."
- Pages 1041-1042 for complete TEA discussion.



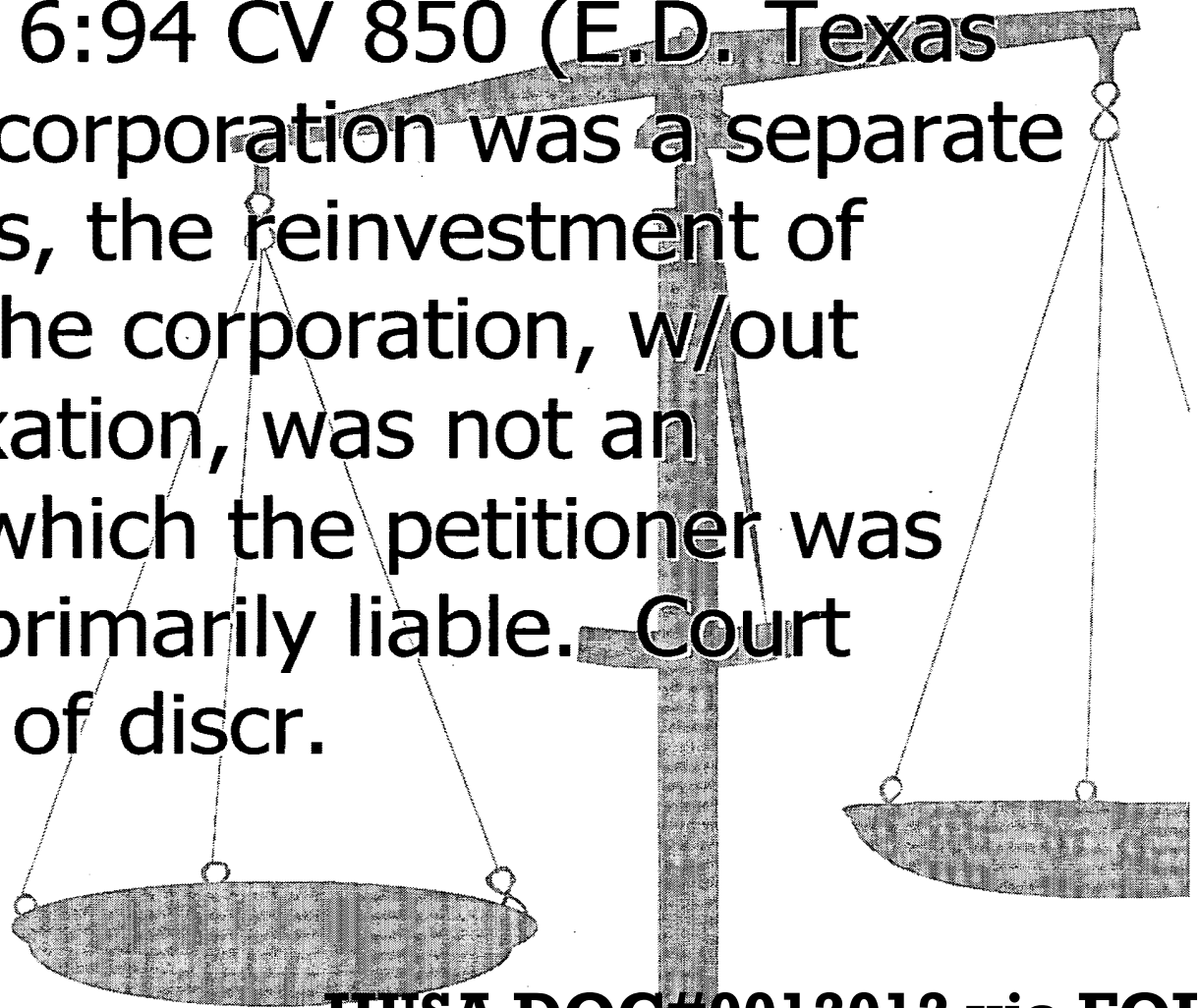
Spencer (cont.)

- APA issues:
- “The precedent decisions do not conflict with any prior published INS decision. They do not constitute APA rule-making. Rather, the decisions provide interpretive guidance.”
- *Id.* at 1044.



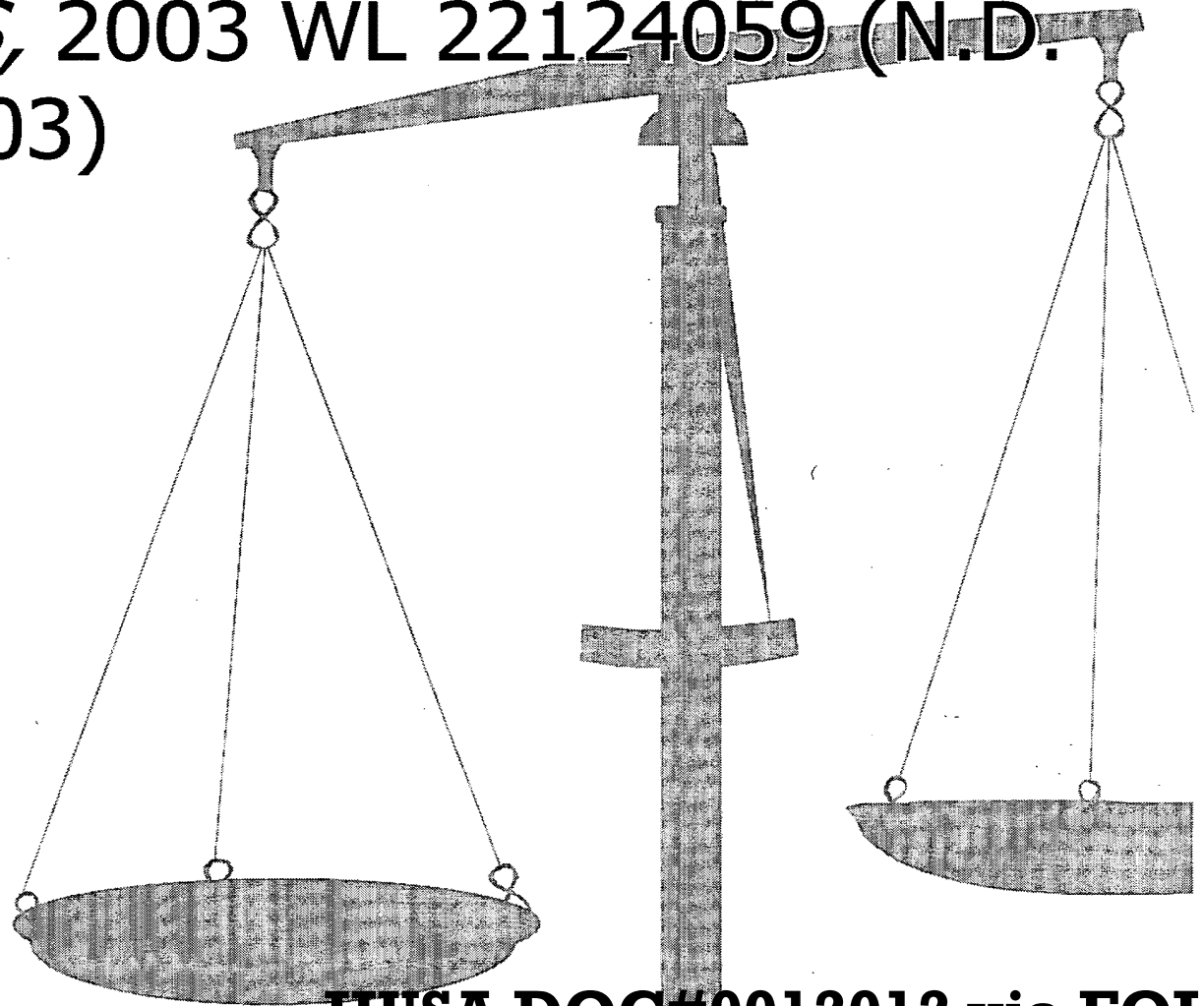
Use of Proceeds

- De Jong v. INS, 6:94 CV 850 (E.D. Texas 1997). INS - a corporation was a separate legal entity, thus, the reinvestment of proceeds from the corporation, w/out removal and taxation, was not an investment for which the petitioner was personally and primarily liable. Court found no abuse of discr.



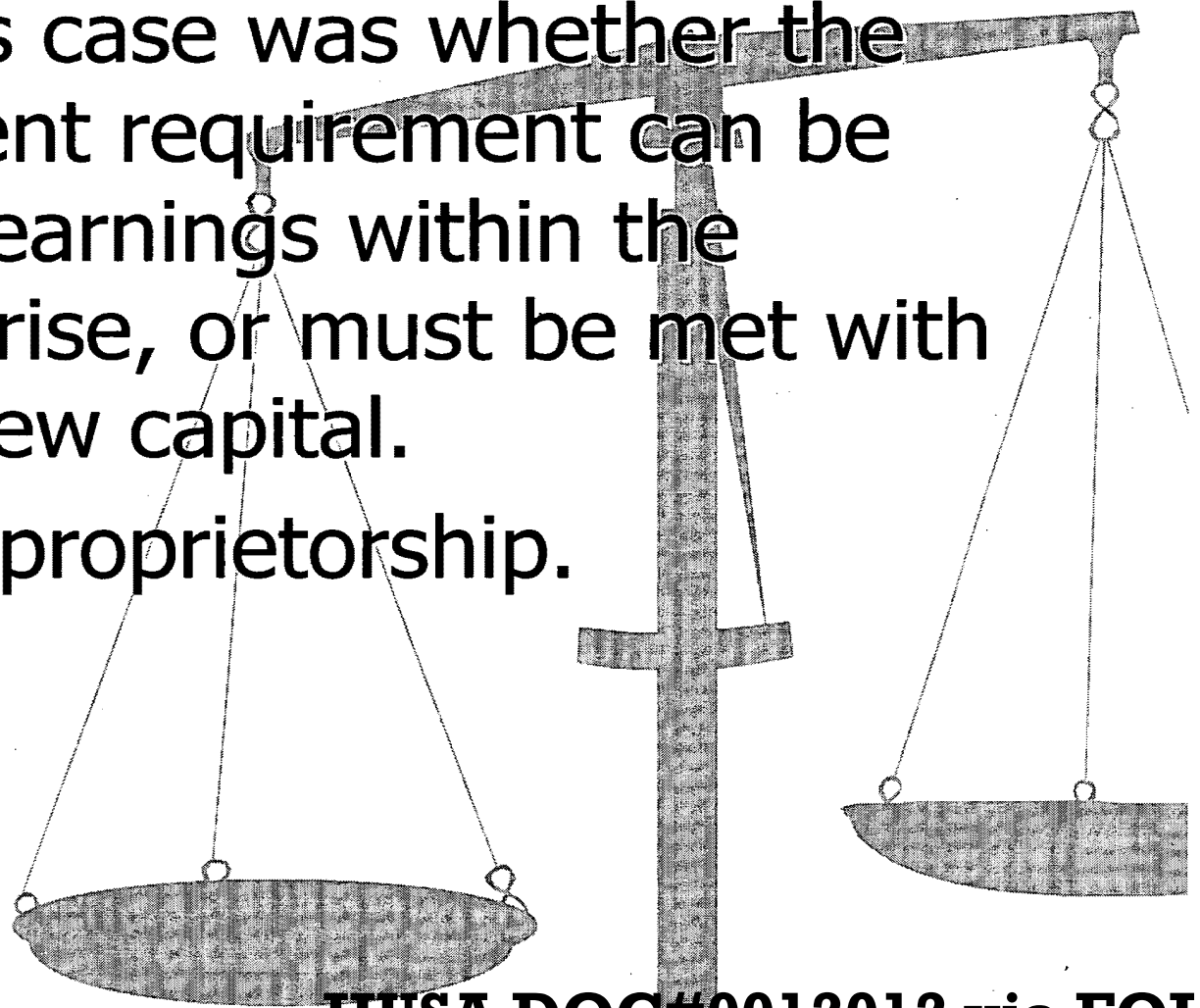
Kenkhuis

- *Kenkhuis v. INS*, 2003 WL 22124059 (N.D. Tex. Mar. 7, 2003)



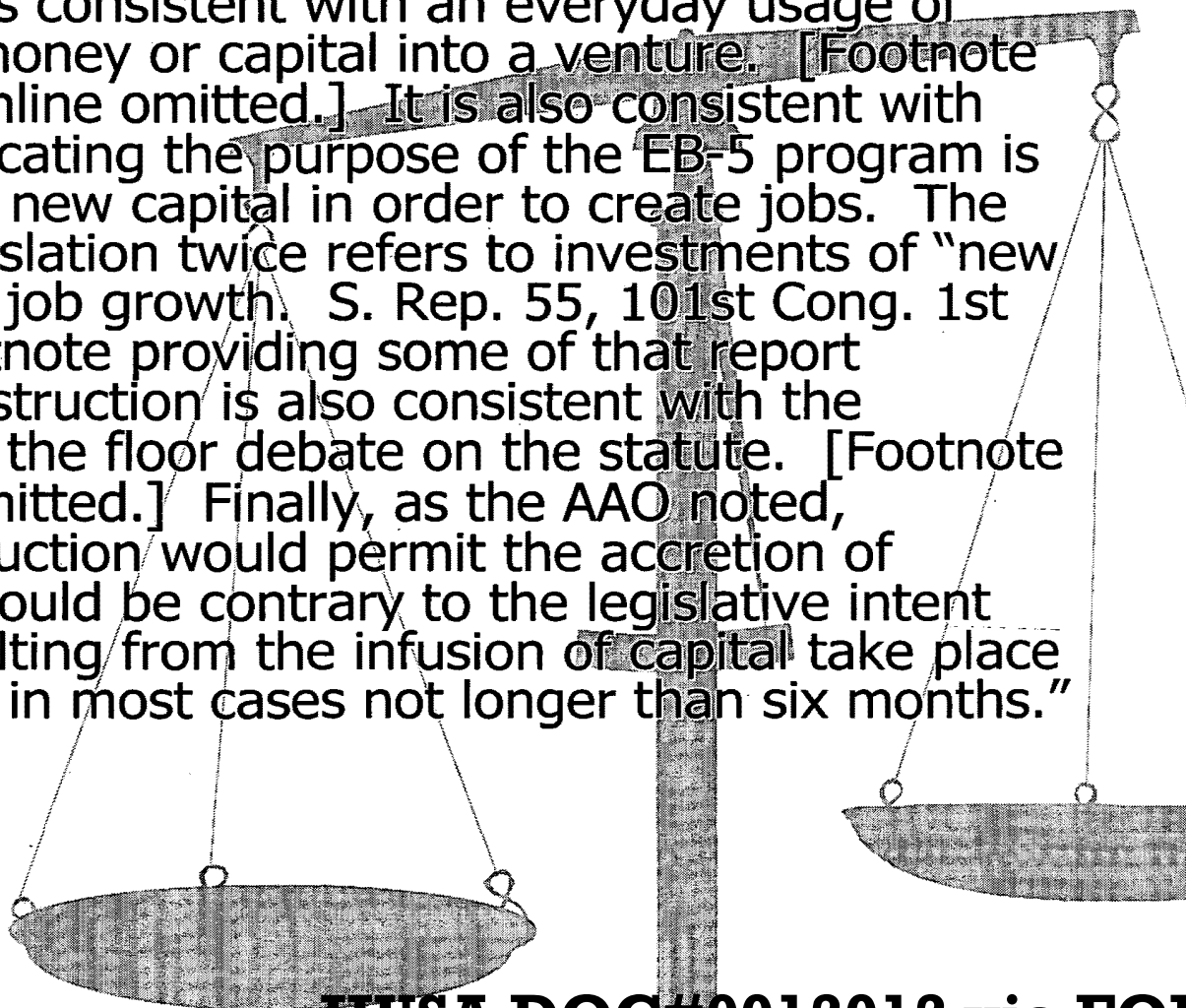
Kenkhuis (cont.)

- The issue in this case was whether the capital investment requirement can be met by leaving earnings within the business enterprise, or must be met with an infusion of new capital.
- Involved a sole proprietorship.



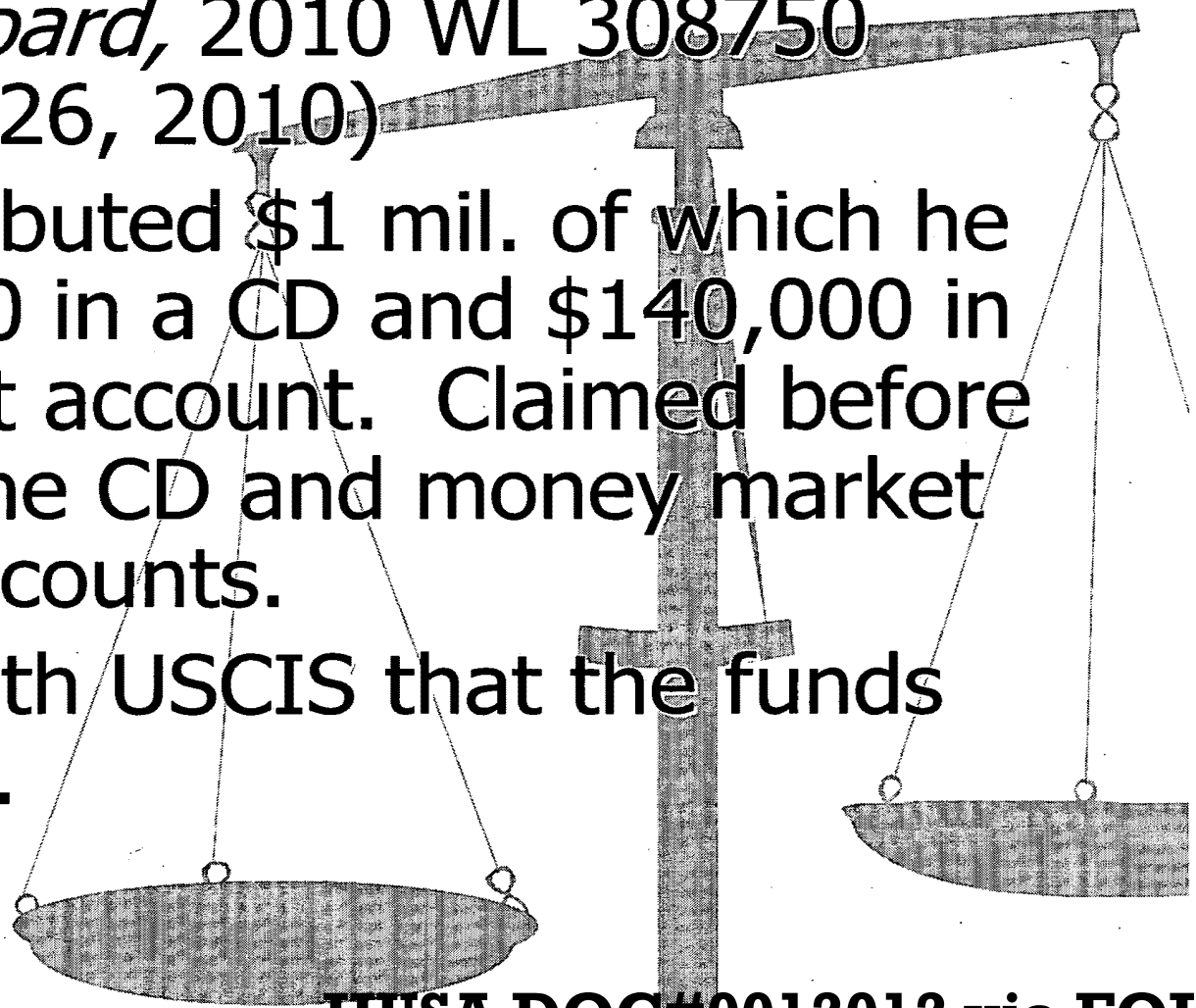
Kenkhuis (cont.)

- "The AAO's construction is consistent with an everyday usage of 'invest,' meaning to put money or capital into a venture. [Footnote citing Mirriam-Webster Online omitted.] It is also consistent with the legislative history indicating the purpose of the EB-5 program is to encourage infusions of new capital in order to create jobs. The Senate Report on the legislation twice refers to investments of "new capital" that will promote job growth. S. Rep. 55, 101st Cong. 1st Sess. 5, 21 (1989). [Footnote providing some of that report omitted.] The AAO's construction is also consistent with the remarks of Sen. Simon in the floor debate on the statute. [Footnote quoting those remarks omitted.] Finally, as the AAO noted, Kenkhuis' contrary construction would permit the accretion of capital over years; that would be contrary to the legislative intent that the job creation resulting from the infusion of capital take place within a reasonable time, in most cases not longer than six months."
- *Id.* at *3.



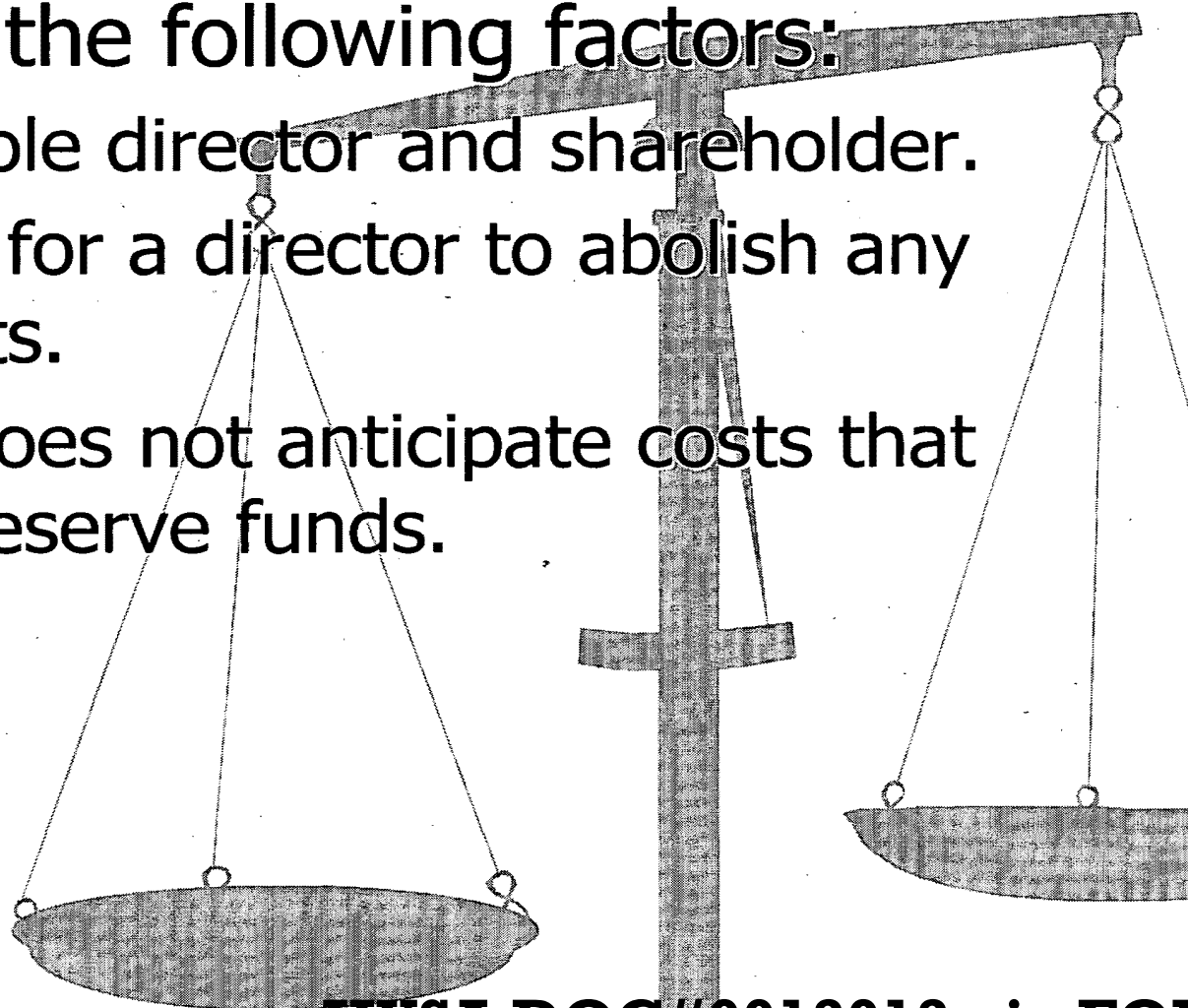
Al-Humaid v. Roark

- *Al-Humaid v. Roark*, 2010 WL 308750 (N.D. Tex. Jan. 26, 2010)
- Petitioner contributed \$1 mil. of which he placed \$800,000 in a CD and \$140,000 in a money market account. Claimed before the court that the CD and money market were reserve accounts.
- Court agreed with USCIS that the funds were not at risk.



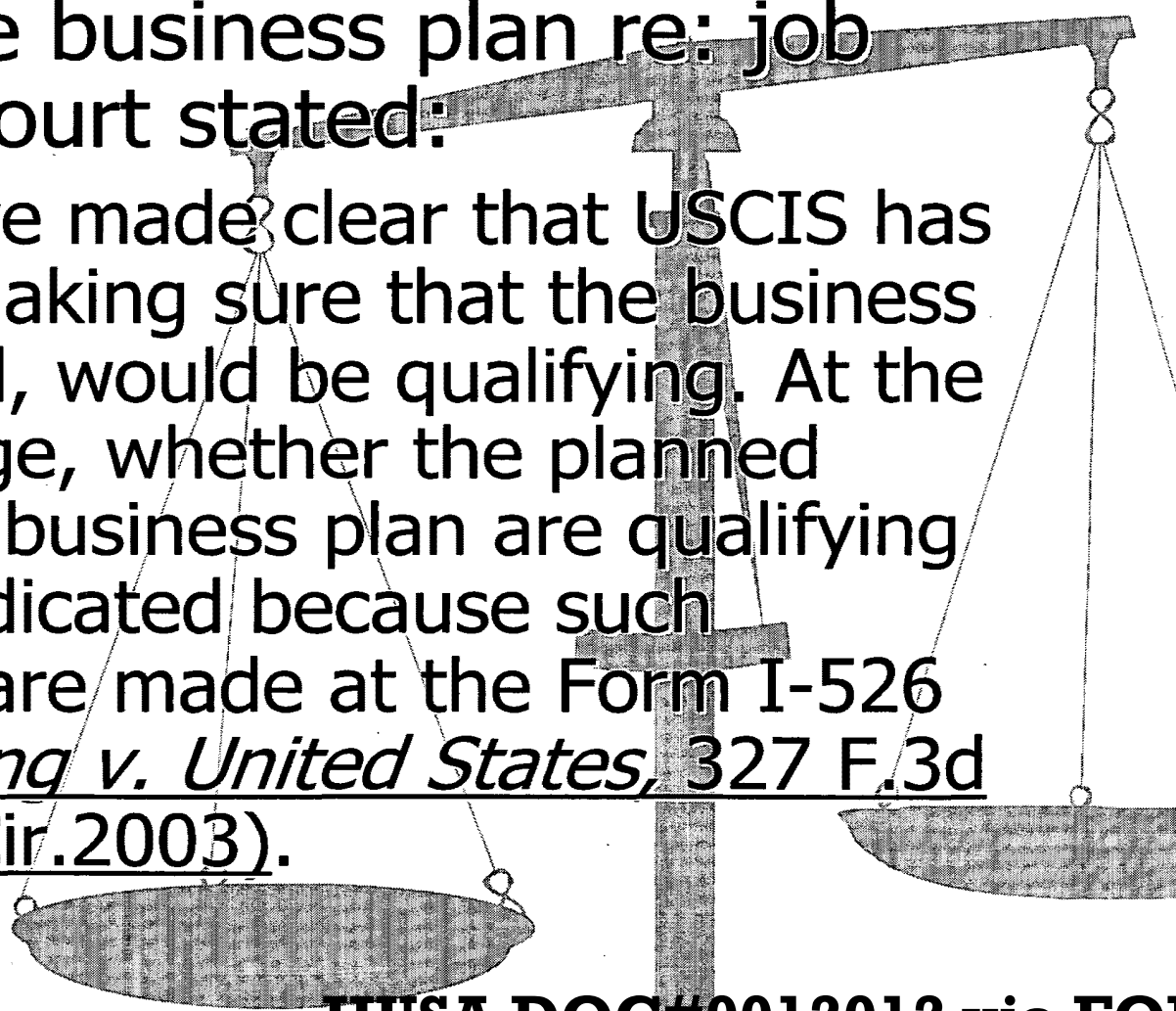
Al-Humaid (cont.)

- Court looked at the following factors:
 - Alien was the sole director and shareholder.
 - Bylaws allowed for a director to abolish any reserve accounts.
 - Business plan does not anticipate costs that will utilize the reserve funds.



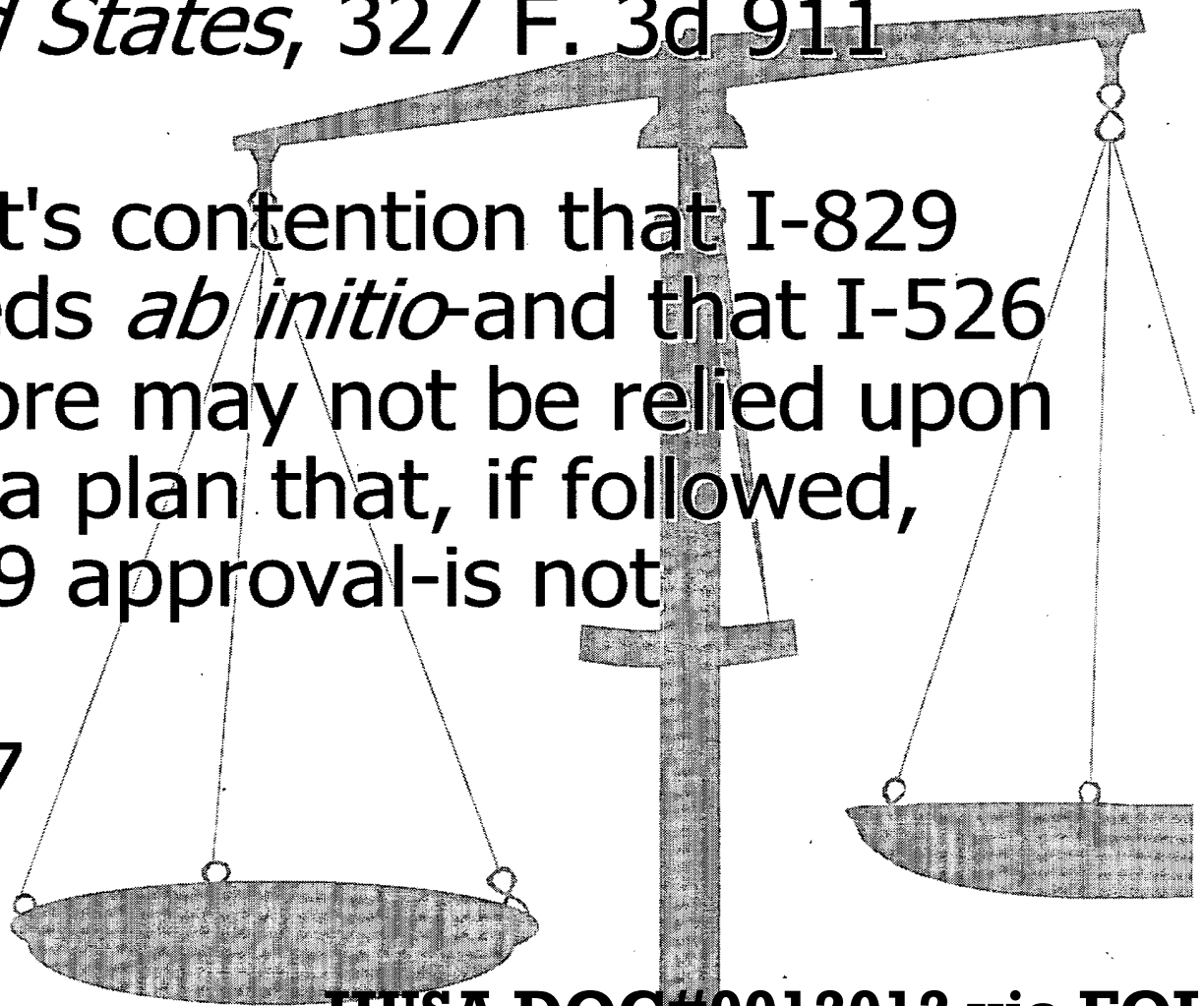
Al-Humaid (cont.)

- Credibility of the business plan re: job creation. The court stated:
 - Defendants have made clear that USCIS has an interest in making sure that the business plan, if followed, would be qualifying. At the Form I-829 stage, whether the planned activities in the business plan are qualifying cannot be adjudicated because such considerations are made at the Form I-526 stage. See *Chang v. United States*, 327 F.3d 911, 927 (9th Cir.2003).



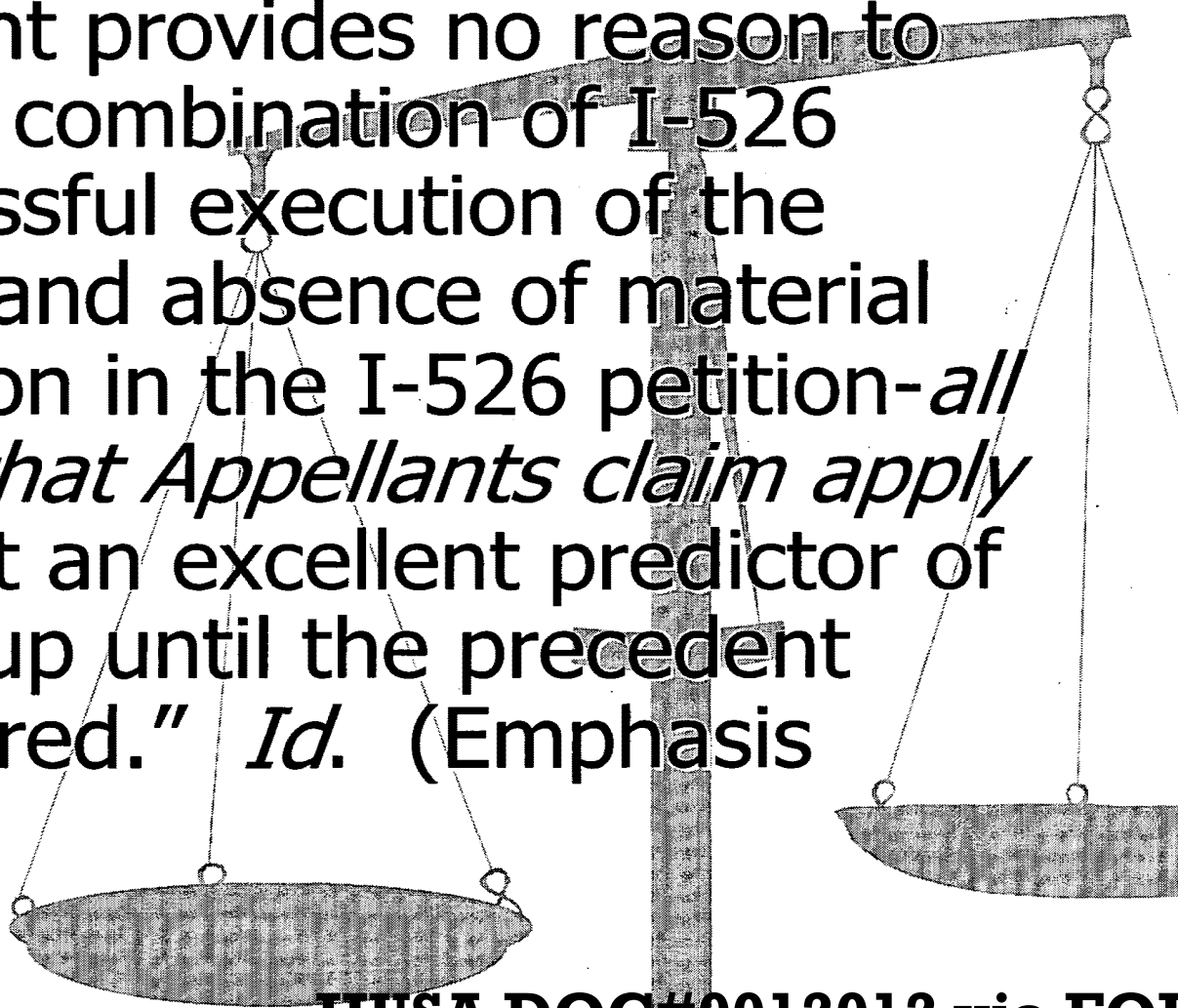
I-829s

- *Chang v. United States*, 327 F. 3d 911 (9th Cir. 2003).
- The government's contention that I-829 approval proceeds *ab initio*-and that I-526 approval therefore may not be relied upon as setting forth a plan that, if followed, will lead to I-829 approval-is not sustainable.
- 327 F. 3d at 927



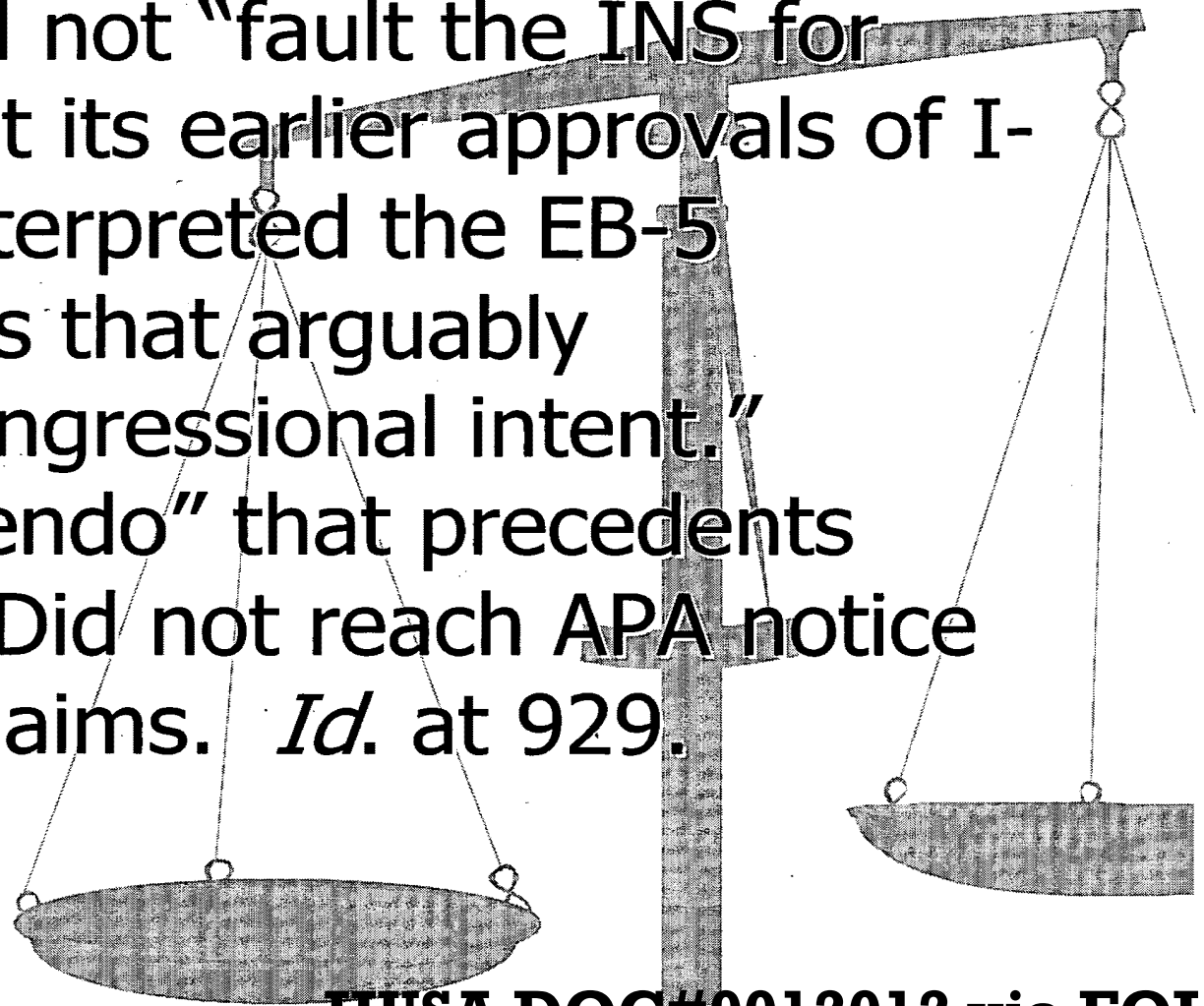
Chang (cont.)

- "The government provides no reason to believe that the combination of I-526 approval, successful execution of the approved plan, and absence of material misrepresentation in the I-526 petition-*all characteristics that Appellants claim apply to them*-was not an excellent predictor of I-829 approval up until the precedent decisions appeared." *Id.* (Emphasis added.)



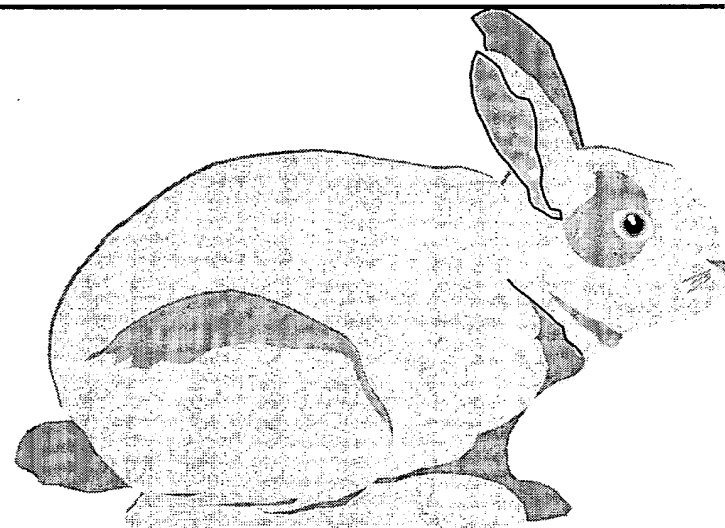
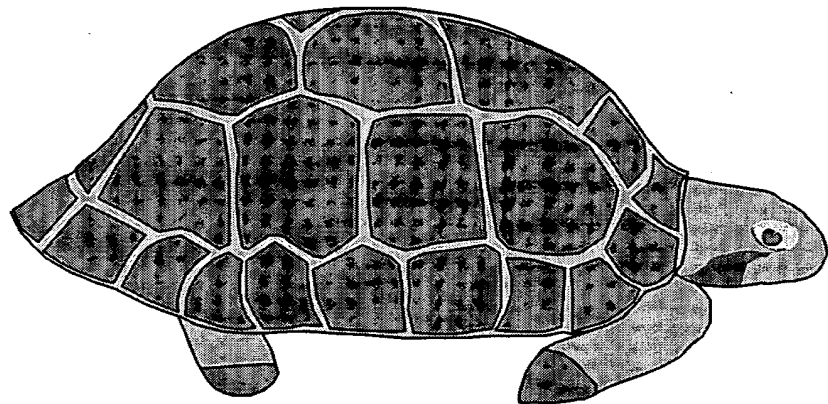
Chang (cont.)

- Circuit Court did not “fault the INS for determining that its earlier approvals of I-526 petitions interpreted the EB-5 program in ways that arguably contravened Congressional intent.” Assumed “arguendo” that precedents were justified. Did not reach APA notice and comment claims. *Id.* at 929.



AAO PRECEDENTS

2010



The Decisions

- *Matter of Soffici*, 22 I&N Dec. 158 (Comm. 1998)
- *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998)
- *Matter of Hsiung*, 22 I&N Dec. 201 (Comm. 1998)
- *Matter of Ho*, 22 I&N Dec. 206 (Comm. 1998)

Matter of Soffici

FACT PATTERN

Petitioner

\$25,000 in earnest money deposits
\$1.7 mil. borrowed from 1st United Bank
\$705,298 cash at settlement

Ames

Inc. 1997
\$2.4 mil.

Howard Johnson's
In business since 1950's

Holdings

- Targeted Employment Area (TEA)
 - 150% of the national unemployment rate
 - Or rural . . .
 - **At the time of filing.**
- Remember, 8 C.F.R. § 204.6(e) requires the area be a TEA at the time of investment, so if years apart, check both.

Soffici Holdings (cont.)

- Balance sheet for hotel reflected \$922,136 as “shareholder loans.” Thus, \$705,298 cash at settlement and \$25,000 earnest money merely loaned to company. Definition of “invest,” 8 C.F.R. § 204.6(e) precludes debt arrangements. Thus, the \$922,136 cannot be considered part of the petitioner’s investment.

Soffici Holdings (cont.)

- Balance of hotel purchase price, \$1.7 mil. financed by Ames through Bank, secured by the hotel.
 - Loan by corp. is not loan by individual.
 - Loans secured by assets of NCE specifically precluded in 8 C.F.R. § 204.6(e).
 - Personal guarantee doesn't help, not *primarily* liable.

Where relevant:

- Loans from third parties used to finance cash investment or capital expenses.
- Promises to pay BY the investor TO the business at a later date as an alleged investment are discussed in *Izummi* and *Hsiung*.

Resources to Invest

- Net worth statement from unknown source includes hotel as an asset of the petitioner and its mortgage as his liability. Own net worth only \$61,747.02.
- Unknown proportion of joint accounts with father.
- Funds of the company for whom he serves as secretary are not his.

Soffici Holdings (cont.)

■ Source of Funds

□ Claimed:

- \$450,000 from personal savings and sale of house
- \$500,000 from sale of “our business.”

□ No sales contract or deed submitted.

□ “Simply going on record without supporting documentary evidence is not sufficient . . .” Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Soffici Holdings (cont.)

- Establish a New Comm. Enterp. (NCE)
 - “It is the job-creating business that must be examined in determining whether a new commercial enterprise has been created.”
 - HoJo’s motor lodge was an ongoing business at the time of purchase - 24 years. Ames merely replaced the former owner.
 - No claim of 40% expansion.
- NEW LAW OVERRULES THIS HOLDING!

Soffici Holdings (cont.)

■ Reorganization -

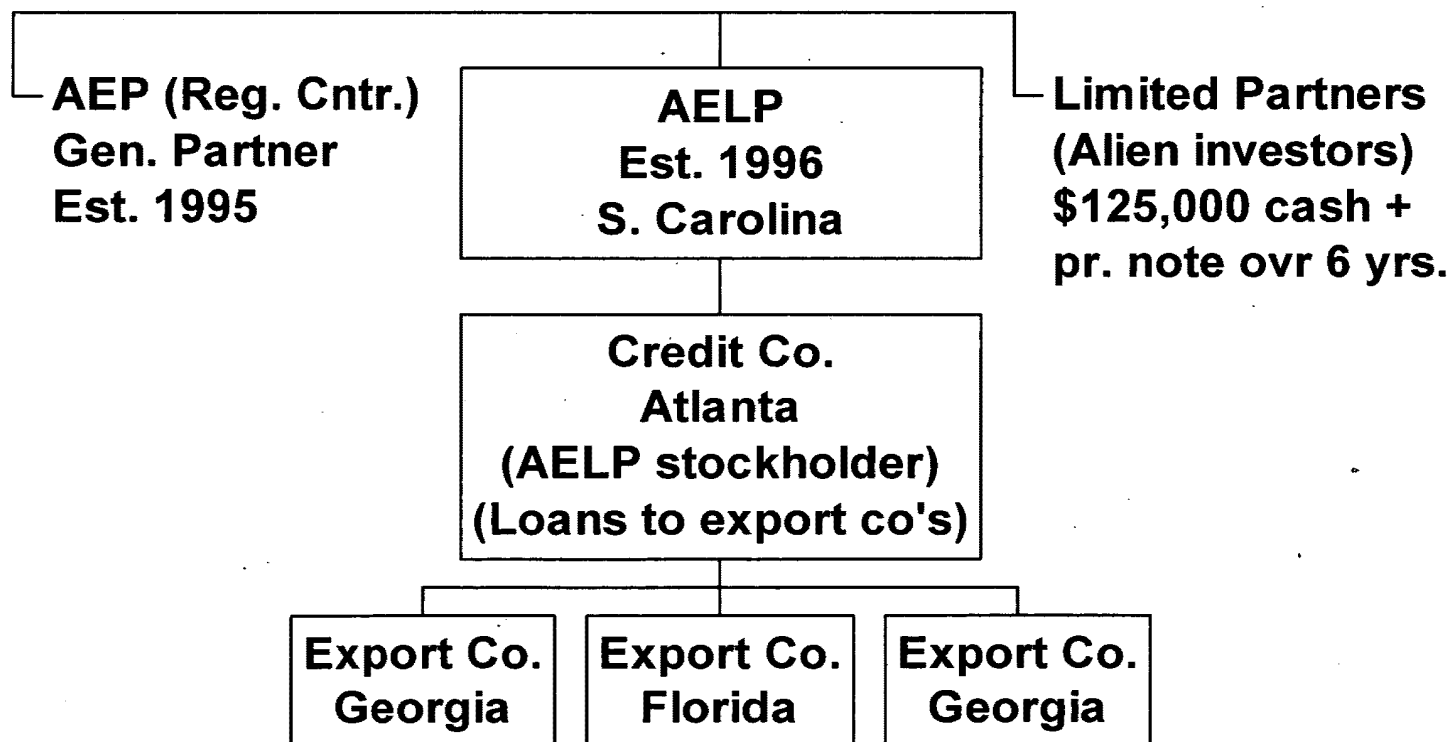
- A hotel prior to purchase, still being operated as a hotel.
- “A few cosmetic changes to the decor and a new marketing strategy for success do not constitute the kind of restructuring contemplated by the regulations, nor does a simple change in ownership.”

Soffici Holdings (cont.)

- Employment creation:
 - Payroll journal did not establish all employees worked at least 35 hours.
 - At most, 20 full-time employees. Hotel previously employed 29 full and part-time employees.
 - No evidence 10 new jobs created, “marketing plan” does not address hiring.
- NOT OVERTURNED BY NEW LAW!

Matter of Izummi [Izumii]

FACT PATTERN



Holdings

■ Regional Center:

- ❑ Letter designating AEP a regional center indicated status applied to 8 coastal areas of S. Carolina, expanded to include 22 other counties in S. Carolina.
- ❑ Loans from credit company in Atlanta to companies in GA and FL.
- ❑ As neither credit co. nor export co. in reg. cntr, can't rely on ind. employment. No "improved regional productivity." 204.6(m)(3(i).

Izummi Holdings (cont.)

- Footnote 4, related business (manuf.) need not be in regional center.
- Targeted Employment Area (TEA)
 - Employment benefits must take place in a TEA to qualify for reduced investment amount.
 - Export companies will create employment. Not all in TEAs. Thus, minimum investment amount is \$1,000,000.

Changes to petition

- Amendments to Partnership agreement rejected on appeal pursuant to Katigbak.
- Acknowledged unpublished decision which accepted revised business plan (from troubled business to non-troubled business) was in error.

Qualifying Investment

- Promissory Note:
 - Initial deposit of \$120,000 into escrow
 - Five annual payments of \$18,000
 - Final “balloon” payment of \$290,000
- \$30,000 of dep. for partnership expenses
- Reserve accounts required by L.P. agreement

Partnership Expenses

- \$30,000 from \$120,000 in escrow to be immediately released from escrow for partnership expenses.
- “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.”

Annual Payments

- Five annual payments of \$18,000, totaling \$90,000.
- 12% per annum return guaranteed on amount contributed IN ADDITION to share of profits.

Money to AELP Over 5 Years

<u>Owed (Net)</u>	<u>Return</u>	<u>Calculation</u>
\$18k (\$3,600)	\$14,400	12% of \$120k
\$18k (\$1,440)	\$16,560	12% of \$138k
\$18,000	\$18,720	12% of \$156k
\$18,000	\$20,880	12% of \$174K
\$18,000	\$23,040	12% of \$192k

Annual Payments (cont.)

- Obligation to pay AELP is conditioned on payment of guaranteed returns.
- Problem is that annual returns are guaranteed, might be paid out of capital.
- No infusion of \$\$ (\$93,600 in returns, only owe \$90,000)
- Not at risk.

Redemption Agreements

- After 6th year, limited partner has the “right to require” AELP to purchase his/her interest.
- Price = total capital - first six payments + pro rate share of profits or \$290,000 plus profits.
- In essence, \$290,000 is a loan payable to the investor in six years.

Redemption Agreements

- “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.”
 - Risk that partnership will default is no greater than risk for any loan.
-

Redemption Agreements

- Can sell interest eventually, just can't have agreement ahead of time.
- Even if sale price is "fair market value" - fmv not applicable, no market for these alien investor interests.
- No risk of profit or loss, if profit, AELP can force sale, if loss, alien investor can force sale.

Cash Reserves

- Partnership agreement requires AELP to place sufficient funds in reserve to meet its obligations under the sell-back provisions.
- Funds not available to employment-generating entity.

Promissory Notes

- As Capital - must determine Fair Market Value of promissory note.
 - Look at future value, \$500,000 today is not \$500,000 in six years.
 - Take into account costs of seizing collateral.
 - Bank accounts securing note - easily dissipated.
 - FMV far short of face value.
 - If last payment optional, decreases FMV

Promissory Notes

- As evidence of intent to invest.
 - Must “substantially complete his payments on the note prior to the end of the two-year conditional period.”
 - See 8 C.F.R. § 216.6(c)(1)(ii).
 - If approved, petitioner would only have paid \$123,600 of own funds at end of two years. Not a good faith commitment of funds.

Where relevant:

- Promise BY Investor TO Business to pay cash at a later date.
- Third party loans to obtain investment funds or to pay capital expenses are discussed in Soffici.

Source of Funds

- Submitted evidence of bank accounts with large balances and foreign company's earnings.
- No evidence of source of funds in accounts.
- Insufficient to demonstrate company's earnings, must demonstrate personal earnings.

New Commercial Enterprise

- AELP established March 25, 1996.
- Petitioner executed the partnership documents October 14, 1997.
- AELP is “new,” however, “the petitioner had no hand in its creation and was not present at its inception.”
- May pool investors, but must gather ahead of time.

NCE (cont.)

- Must be there at the beginning.
- Should be established prior to filing.
 - Footnote 29 rejects argument that “establishment” is a process which is not complete until all investors obtained.
 - If that interpretation were adopted, petition filed prematurely as all investors not yet obtained.
 - Would be too speculative.

NCE (cont.)

■ Expansion:

- ❑ Claimed 95 investors previously approved. If true, and all invested \$500,000, one investment of \$500,000 cannot increase net worth 40%.
- ❑ Not in case, but net worth is a defined accounting term: assets - liabilities. Other measures of a business' worth - such as appraised value are no good. Two balance sheets are required (before and after inv).

NCE (cont.)

- Reorganization:

- Doing same business prior to investment. No reorganization.

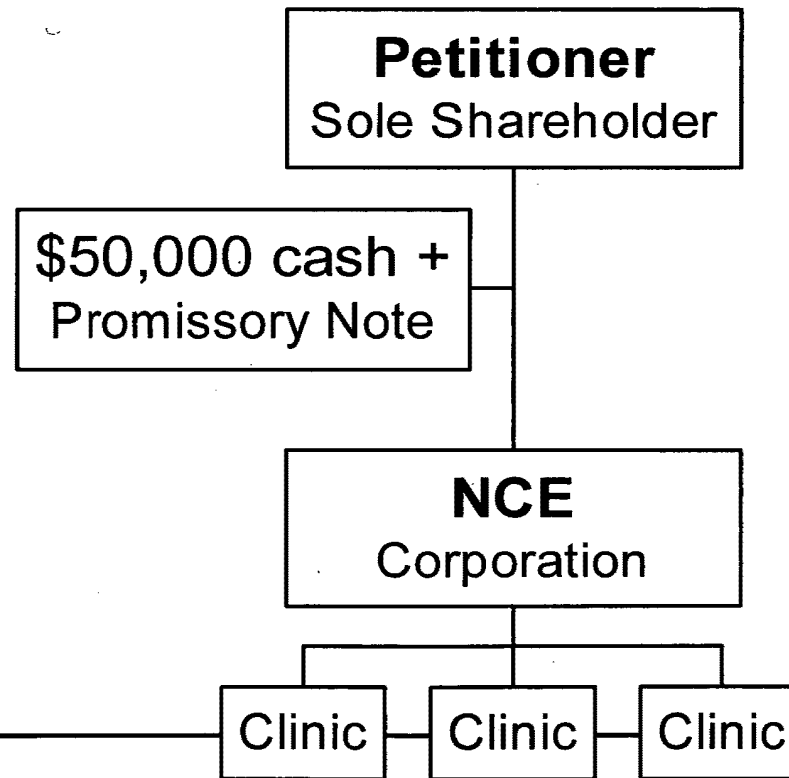
THAT'S ALL FOR IZUMMI!



- (Two short precedents to go!)

Matter of Hsiung

Fact Pattern



Matter of Hsiung

- **Payment Plan:**
 - \$50,000 initially.
 - \$50,000 within 30 days of I-526 approval.
 - \$200,000 one year after entry.
 - \$200,000 prior to removal of conditions.
- **Promise to pay secured by property with FMV of \$500,000. Property was not in petitioner's name.**

Hsiung (cont.)

- Assets securing note must be
 - Owned by petitioner (not his business).
 - Specifically identified.
 - Not “my assets everywhere.”
 - Must be perfected.
 - Interest is recorded
 - Petitioner’s burden
 - Fully amenable to seizure
 - Foreign entities can’t seize assets in China.

Hsiung (cont.)

- Assets (cont.)

- Worth \$\$ in note. (Mortgage on property made property worth less than note.)
 - Cover costs of seizing assets overseas.

- Who are parties to note?

- Solely owned shareholder loaning money to corporation, funds not really at risk.

Where relevant:

- Promise BY investor TO business to pay capital investment at a later date.
- Soffici covers loans by business or investor to pay a cash investment or capital expenses.

Hsiung (cont.)

■ Employment Creation.

- ❑ NCE planned to purchase preexisting clinics.
- ❑ “A petitioner cannot directly cause a net loss of employment.”
- ❑ In other words, must create 10 new job opportunities. Look at Part 5 of I-526 - how many jobs prior to investment? Need wage and withholding reports of previous business.

Matter of Ho

Fact Pattern

Petitioner

Sole Shareholder
500,000 shares

NCE

\$500,000

Matter of Ho

■ Facts:

- ❑ \$500,000 placed into a corporate account (King's Wheel Corporation).
- ❑ Petitioner was the sole owner of the corporation, issued 500,000 shares.
- ❑ Business plan indicated sales would commence in 3-6 months.
- ❑ Office/warehouse lease, but no purchase of equip., negotiations with suppliers/buyers.

Ho (cont.)

- “ 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. Simply formulating an idea for future business activity, without taking meaningful concrete action, is similarly insufficient. . . . ”

Ho (cont.)

- Must commence operations, the petitioner must present evidence of the “actual undertaking of business activity.”
- If only activity prior to investment - original business issue.
- Not discussed in Ho, but simply showing a deposit is also insufficient because the money might not constituted “capital.”

Other places to get “capital” numbers from:

- Corp. tax return, schedule L
- Partnership tax return (also used for LLC)
 - Schedule L, line 21
 - Schedule M-2, Analysis of Partners' Capital Accounts
 - Schedule K-1 for individual partners, members, shareholders of S-Corps - see section J.

Ho (cont.)

- Source of Funds:

- No evidence of marital relationship, medical practice, or income over 5 years.

Ho (cont.) - Employment

- Evidence presented:
 - Two I-9s for jobs allegedly created, business plan calling for 8 new employees within 1 yr.
- I-9s insufficient evidence of full-time employment. Need payroll records.
- Business plans:
 - Must make sense.
 - Have a time table for hiring

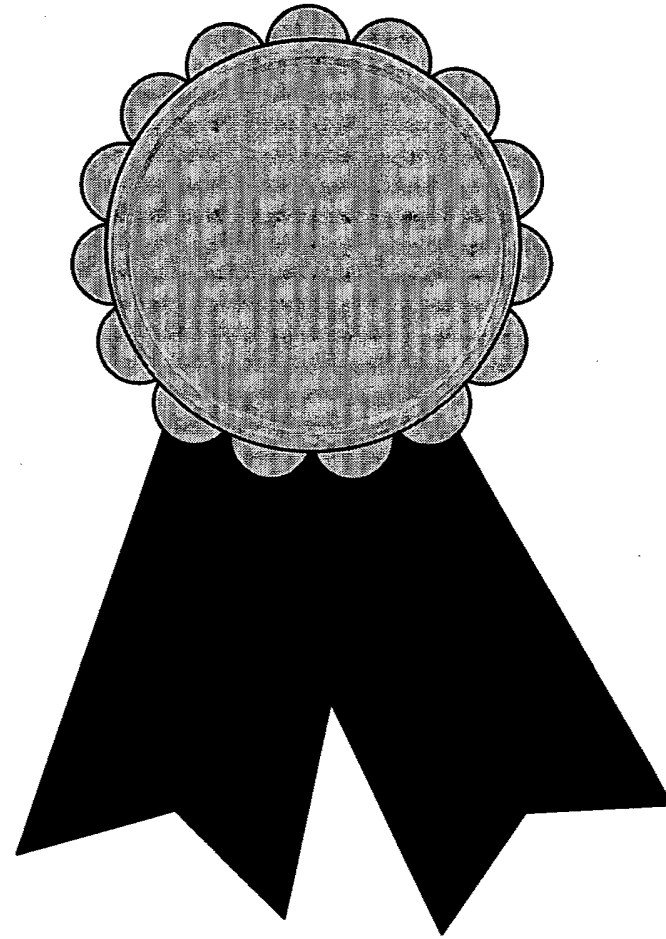
Ho (cont.)

■ Business Plans (cont.)

- Job descriptions
- Explain why the employees are needed
- Include market analysis
 - competition
 - process
 - sources of suppliers
 - marketing structure
 - projections (credible!)

THAT'S ALL FOLKS!

■ GOOD LUCK!





U.S. Citizenship and Immigration Services

ESTABLISHING A NEW
COMMERCIAL ENTERPRISE

NEW COMMERCIAL ENTERPRISE

- Although the 2002 Amendments to the INA removed the requirement that an alien personally establish the new commercial enterprise, it is still required that a “new” commercial enterprise be established.
- According to 8 CFR, 204.6(e), “*New* means established after November 29, 1990.”

- **Title 8 Code of Federal Regulations Section 204.6(h) states:**
- 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.

■(1) The creation of an original business

- This part of the regulations allows for the new commercial enterprise to be an original entity formed after November 29, 1990, as opposed to a pre-existing business.

- For example, if an alien purchases an interest in a car dealership that has been in operation since 1955, he would not qualify under this paragraph of the regulations. However, he might be able to demonstrate eligibility under 8 CFR, 204.6(h)(2) or (3).
- Note that there are many sources of information which can establish when the business was started such as: the first page of the tax return, incorporation papers, various business registration documents, partnership and other agreements, etc.
- However, also be aware that just because a company files these documents, that doesn't mean that the business did not exist before. Sometimes businesses merge, get bought out, change names, or take other actions which could make them appear to be newly created. Be on the lookout for conflicting information on company websites, tax returns, and other documents.

- (2) The purchase of an existing business and simultaneous or subsequent restructuring or reorganization such that a new commercial enterprise results

➤ This part of the regulations allows for the alien to purchase a business that was already in operation as long as it was changed to such a degree that one could consider the resulting business as completely new and different from the one that existed previously.

- For example, if an alien purchases a budget hotel and continues to operate it under a different business name, we would require more evidence of reorganization and restructuring.
- Look for real changes in modes of operation, products and services offered, business structure, organization of personnel, and other aspects which would indicate that a new business has resulted.
- Note that it is not enough that an entity merely be reorganized or restructured. It must be reorganized or restructured to such an extent that a new business has resulted.

- What are some examples of changes which would indicate that a new business has resulted?

- If a dairy reorganized from a corporation to a partnership, but kept the same employees, equipment, and cows, would such a change meet the standard?

- If an alien bought a cafe and then restructured and reorganized it to also provide catering and banquet services in a new 5,000 square foot facility, would it appear that a new business resulted?

- If a taxi service added a new limousine to its fleet and changed its name, would such a change meet the standard?

- If an alien bought a Motel 6 business and then through improvements and a new franchise began operating a Marriott hotel, would such a change meet the standard?

- (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.

➤ This part of the regulations allows for the alien to purchase a business that was already in operation and expand it.

- Note that the regulations draw a nexus between the investment of the required amount and the expansion of the business with a resulting change in net worth or number of employees of 40%.
- Also note that you will need evidence of the net worth or number of employees both prior to and after the investment. Sources of this information would likely be: 1) tax returns or audited financial statements for the net worth; and 2) state quarterly wage reports, Forms W-2, or employment records for the number of employees.
- Remember that the assertions of the petitioner or Counsel are not substitutes for probative evidence. A list of employees or a letter from an accountant do not carry the same weight as tax returns and other forms filed under penalty of perjury.

- *Net Worth = Assets minus Liabilities.* Find these figures on Schedule L of the corporate or partnership tax return.
- Now take a look at these examples and determine if a substantial expansion has taken place.
 - At the end of 2005 the assets are \$550,000 and the liabilities are \$600,000. The alien invests in 2006. At the end of 2007 the assets are \$2,700,000 and liabilities are \$2,800,000.
 - ✓ No, in this case the net worth has decreased from -\$50,000 to -\$100,000 (\$550,000 assets - \$600,000 liabilities = -\$50,000 net worth ; \$2,700,000 assets - \$2,800,000 liabilities = -\$100,000 net worth).

- At the end of 2006 the assets are \$1,500,000 and the liabilities are \$900,000. The alien invests in 2007. At the end of 2007 the assets are \$2,850,000 and liabilities are \$2,000,000.
- ✓ Yes, in this case the net worth has increased over 40% from \$600,000 in 2006 to \$850,000 in 2007 – an increase of \$250,000. ($\$1,500,000 - \$900,000 = \$600,000$ net worth; $\$2,850,000 - \$2,000,000 = \$850,000$ net worth; Note that $\$600,000 \times 40\% = \$240,000$ minimum increase in net worth; $\$850,000 - \$600,000 = \$250,000$ increase in net worth in this case).

➤ The Forms W-2 for 2005 indicate 25 employees earning wages reflective of full-time employment (35 hours per week x minimum wage). After the alien invests in 2006, she is able to provide 45 Forms I-9. Are you satisfied that an increase in 40% in the number of employees has taken place?

✓ No, in this case the evidence of Forms I-9 does not demonstrate the number of employees actually being paid and currently employed by the business.

- The Forms W-2 for 2006 indicate 250 employees worked for an I.T. firm. After the alien invests in 2008, he is able to provide state quarterly employment reports for two quarters which demonstrate that the company now employs 350 employees. Does it appear that an increase in 40% in the number of employees has taken place?
- ✓ Yes, in this case the evidence of state quarterly employment reports and Forms W-2 provide good evidence of a 40% increase ($250 \times 40\% = 100$; $250 + 100 = 350$).
- Consider the totality of the evidence presented and make sure you are satisfied that the requirements in the regulations are met.

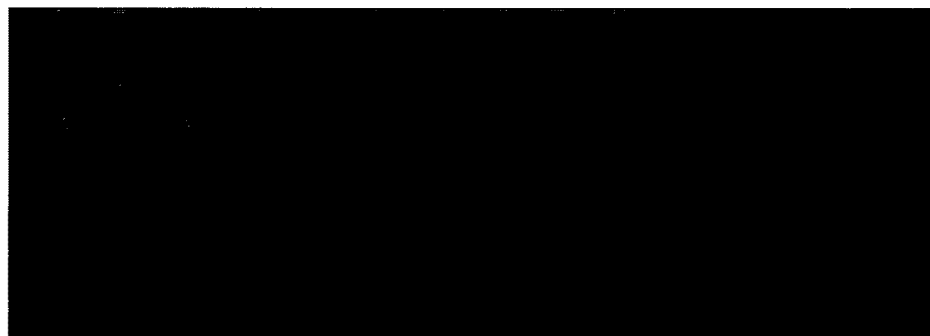
ESTABLISHING A NEW COMMERCIAL ENTERPRISE

THE END



U.S. Citizenship and Immigration Services

Preponderance of Evidence Standard



Burden of Proof and Standard of Proof

Adjudicator's Field Manual (AFM) 11.1(c)

■ Burden of Proof

- The burden is on the petitioner to establish that he or she is eligible for the benefit sought. See Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966).

■ Standard of Proof

- The standard of proof applied is the “preponderance of the evidence” standard. See U.S. v. Cardozo-Fonseca, 480 U.S. 421 (1987)



Standard of Proof, cont'd:

U.S. v. Cardozo-Fonseca

- If the petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. (defining “more likely than not” as a greater than 50 percent probability of something occurring).



Standard of Proof, cont'd:

- If a petitioner provides supporting documentation that satisfies the regulatory prongs, and such documentation is legitimate (i.e. not forged, issued in error, inaccurate, etc.), Kazarian prohibits USCIS from “unilaterally imposing novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. section 204.5.” Kazarian requires that an adjudicator first determine whether the petitioner has provided evidence to satisfy the requisite number of evidentiary prongs under the particular classification. The adjudicator must look at each prong for which evidence has been provided (“the proper procedure is to count the types of evidence provided”) to determine how many evidentiary prongs have been satisfied.



Standard of Proof, cont'd:

- So long as the documentation (including but not limited to articles, publications, memos, reference letters, expert testimony, support letters etc.) is relevant to the category, is substantive (does not merely recite the statute and regulations) and is credible, under Kazarian it suffices. Once USCIS determines that the petitioner has provided satisfactory evidence as to the requisite number of prongs, the second phase of review requires the adjudicator to weigh the evidence against the required high level of expertise for the visa category. It is in the second phase of the review that the evidence can be reconsidered not to see if it meets the fundamental test but to see if, cumulatively, it proves by a preponderance of the evidence that the applicant or beneficiary is in the very top of his/her field of endeavor.



Active Involvement in the New Commercial Enterprise

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

(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.

How active must the investor be in the management or policy activities of the commercial enterprise, that is, what constitutes "active involvement" for purposes of meeting the requirement for this in the regulations?

It is important that when adjudicating an I-526, that the ISO bear in mind that the "active involvement" requirement is a lesser requirement when the most critical requirements of lawful source of fund, required amount of capital fully invested and at risk, and creation of ten (10) jobs per alien are all favorably determined. As such, officers should exercise a degree of flexibility in applying the factor of "active involvement" in reaching a determination to grant or deny the petition.

“Active Involvement” in a Limited Partnership

In regard to limited partnerships, note that the regulation at 8 CFR 204.6(j)(5) states....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.”

"Active Involvement" in a Limited Partnership, Cont'd

ISOs should become familiar with the content of the partnership agreements in the adjudication of the I-526 petition to ensure that they comport with and provide all the rights, privileges and authorities to a limited partner pursuant to the ULPA.

“Active Involvement” in a Limited Partnership, Cont’d

PLEASE NOTE: Although the regulations provide that an alien investor limited partner be “granted” the rights, powers, and privileges provided under the ULPA, it’s important to bear in mind that there is NO requirement in the regulations that the Alien Investor actually “exercise” or “act on” these---merely that the investor has these “rights, powers and privileges.”

“Active Involvement” in a Limited Liability Company (LLC) or a Corporation

- LLCs are a fairly new business structure. The EB-5 statute and regulations do not address the “active involvement” in an LLC.
- In most LLC membership arrangements and corporate stockholder agreements and by-laws provide the investor with authority to make high level policy decisions, which suffices for EB-5 purposes.

THE END



U.S. Citizenship and Immigration Services

TEAs 2010

Statutory Framework for Targeted Employment Areas (TEAs)

INA §203(b)(5)(B) Set-aside for targeted employment areas.-

- (i) In general. - Not less than 3,000 of the visas made available under this paragraph in each fiscal year shall be reserved for qualified immigrants who invest in a new commercial enterprise described in subparagraph (A) which will create employment in a targeted employment area.**
- (ii) Targeted employment area defined. - In this paragraph, the term "targeted employment area" means, at the time of the investment, a rural area or an area which has experienced high unemployment (of at least 150 percent of the national average rate).**
- (iii) Rural area defined. - In this paragraph, the term "rural area" means any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States).**



**U.S. Citizenship
and Immigration
Services**

Statutory Framework for Targeted Employment Areas (TEAs)

INA §203(b)(5)(C)(i) & (ii) Amount of capital required. -

(i) In general. - Except as otherwise provided in this subparagraph, the amount of capital required under subparagraph (A) shall be \$1,000,000. The Attorney General, in consultation with the Secretary of Labor and the Secretary of State, may from time to time prescribe regulations increasing the dollar amount specified under the previous sentence.

(ii) Adjustment for targeted employment areas.- The Attorney General may, in the case of investment made in a targeted employment area, specify an amount of capital required under subparagraph (A) that is less than (but not less than 1/2 of) the amount specified in clause (i).



**U.S. Citizenship
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Statutory Framework for Targeted Employment Areas (TEAs)

INA §203(b)(5)(C)(iii) Amount of capital required. -

(iii) Adjustment for high employment areas.-In the case of an investment made in a part of a metropolitan statistical area that at the time of the investment -

(I) is not a targeted employment area, and

(II) is an area with an unemployment rate significantly below the national average unemployment rate, the Attorney General may specify an amount of capital required under subparagraph (A) that is greater than (but not greater than 3 times) the amount specified in clause (I).



**U.S. Citizenship
and Immigration
Services**

TEA Regulatory Definitions:

8 CFR § 204.6 (e):

High employment area

means a part of a metropolitan statistical area that at the time of investment:

- (i) Is not a targeted employment area; and**
- (ii) Is an area with an unemployment rate significantly below the national average unemployment rate.**

Note: This regulation is technically not currently in effect because no increased level of capital investment has been set.



**U.S. Citizenship
and Immigration
Services**

TEA Regulatory Definitions, Cont'd:

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.



U.S. Citizenship
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Services

TEA Regulations, Cont'd:

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.



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Statutory Definition of "State":

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 .



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I-526 TEA Requirements:

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



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TEA Regulations:

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).



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TEA Determinations

Each Form I-526 petition in which the petitioner claims eligibility for the reduced capital investment threshold of \$500,000 as a result of a capital investment in a new commercial enterprise principally doing business in a high unemployment area must demonstrate that the area qualifies as a high unemployment area as of the date of filing of the Form I-526 petition.

[See 8 C.F.R. §204.6(j)(6)(ii); 8 C.F.R. §103.2(b)(1). See also Matter of Katigbak, 14 I&N Dec. at 49.]



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TEA Determinations, Cont'd

A conflict between the statutory and regulatory requirements, and *Matter of Soffici* may arise when an alien makes a capital investment at a point in time prior to the filing of the Form I-526 petition when the area in which the investment is made qualifies as a TEA, only to have the area no longer qualify as a TEA at the time of filing of the Form I-526 petition. In order to promote predictability in the capital investment process and to reconcile the potential conflict outlined above, ISOs must identify the appropriate date to examine in order to determine that the alien's capital investment qualifies for the reduced \$500,000 threshold according to the following "if, then" table:



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TEA Determinations, Cont'd

TEA "if then" Table	
If the Investment...	Then...
Is made into the commercial enterprise's job creating project prior to the filing of the Form I-526 petition...	The TEA analysis should focus on whether the location of the investment qualifies as a TEA at the time of the investment.
Has yet to be committed to the commercial enterprise's job creating project at the time of filing of the I-526, i.e. is still in escrow or is otherwise not irrevocably invested into the commercial enterprise pending the approval of the I-526 petition...	The TEA analysis should focus on whether the location of the investment qualifies as a TEA at the time of the filing of the I-526 petition.
Note: Capital investment dollars withheld from the NCE in Escrow is not invested capital.	



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TEA Determinations, Cont'd

Note: In some instances, an alien may request eligibility for the reduced investment threshold based on the fact that other EB-5 aliens who previously invested in the same project qualified for the \$500,000 minimum investment, even though the area did not qualify at the time of the instant alien's investment or the filing of his or her Form I-526. Each alien must establish that his or her capital investment qualifies for the reduced investment threshold, and cannot rely on previous TEA determinations made based on facts that have subsequently changed.

Note also that the area where the new commercial enterprise is located may qualify as a TEA at the time the capital investment is made or the I-526 petition is filed, (whichever occurs first), but may cease to qualify by the time the Form I-829 petition is filed. Changes in population size or unemployment rates within the area during the alien investor's period of conditional permanent residence are acceptable as increased job creation is the primary goal of the EB-5 program.



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TEA Determinations, Cont'd

Are state-issued TEA designations required in order to demonstrate that an area is a TEA based upon high unemployment?

8 CFR 204.6(j) Initial Evidence to accompany (Form I-526) petition.

8 CFR 204.6(j)(6)(ii)(A) Evidence of TEA

8 CFR 204.6(j)(6)(ii)(B) Letter from State-designated official that meets the requirements of 8 CFR 204.6(i).



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TEA Determination Data Issues:

Reminder: The term “high unemployment area” means an area which has experienced unemployment of at least 150 percent of the national average rate. See INA § 203(b)(5)(B)(ii). The I-526 petitioner must demonstrate that, at the time the capital investment is made or the petition is filed (whichever occurs first), there has been an unemployment rate of at least 150% of the national unemployment rate within the MSA or other non-rural area in which the commercial enterprise that will create or preserve jobs is located.

This should be based on the most recent information available to the general public from federal or state governmental sources as of the time the I-526 petition is submitted.



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TEA Determination Data Issues:

In some instances I-526 petitioners may claim high unemployment in only a portion or portions of a geographic area or political subdivision for which distinct unemployment data is not readily available to the general public from federal or state governmental sources. This may be indicative of an attempt by the petitioner to “gerrymander” a finding of high unemployment when in fact the area does not qualify as being a high unemployment area. Such a claim is not sufficient to establish that the area is a high unemployment area unless it is accompanied by a designation from an authorized authority of the state government.



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TEA Determination Data Issues, Cont'd:

The Bureau of Labor Statistics (BLS) provides data regarding the national average rate of unemployment at www.bls.gov/cps/. BLS's Local Area Unemployment Statistics (LAUS) program produces monthly and annual unemployment and other labor force data for census regions and divisions, states, counties, metropolitan areas, and many cities, by place of residence. This information can be found at www.bls.gov/lau/. States, the District of Columbia, and the U.S. territories may also publish local area unemployment statistics on their government websites.



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TEA Determination Data Issues:

Some elements of problematic data analysis:

- **Data set is not comparable, i.e, compares apples to oranges such as comparing Data:**
 - **For the national rate for fiscal year to Local rate for calendar year 2010;**
 - **Seasonally adjusted data to non-seasonally adjusted data;**
- **Data is not for the period of time in which the investment was made, and;**
- **Averaging unemployment rates amongst various areas within the requested TEA designation area without weighting the averages based on population differentials.**



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States' Role in Making TEA Determinations

The regulation at 8 CFR 204.6(i) provides that a state government 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% of the national average rate.) The following reasoning for involving states in this process was noted in legacy INS' final rule implementing the initial EB-5 regulations, *Employment-Based Immigrants*, [56 FR 60897]:

Twelve commenters called for the Service to change the definition of targeted employment area. The Service cannot, of course, alter the statutory definition of targeted employment area. The Service has concluded, however, that the designation of smaller geographic or political areas within metropolitan statistical areas or within cities or towns with a population of 20,000 or more as areas of high unemployment would comport with the intent of Congress regarding targeted employment areas. [emphasis added]



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States' Role in Making TEA Determinations, Cont'd

This part of the rule contains a method for the designation of such geographic or political areas as areas of high unemployment. Under the final rule, a state government may delegate to any agency, board, or other appropriate state governmental entity the authority to certify that geographic or political subdivisions of non-rural areas within the state qualify as areas of high unemployment. The delegation must be reported to the Immigration and Naturalization Service through the Associate Commissioner for Examinations prior to the issuance of any area designation. The evidence of such area designations that a state provides to a prospective alien entrepreneur should include a description of the boundaries of the geographic or political subdivision and the method or methods by which the unemployment statistics were obtained.



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States' Role in Making TEA Determinations, Cont'd

This part is not intended to place any unnecessary burden upon any state. With respect to geographic and political subdivisions of this size, however, the Service believes that the enterprise of assembling and evaluating the data necessary to select targeted areas, and particularly the enterprise of defining the boundaries of such areas, should not be conducted exclusively at the Federal level without providing some opportunity for participation from state or local government. This part of the rule is merely intended to afford the states a method by which particular areas of high unemployment within their boundaries may qualify as "targeted," and to allow alien entrepreneurs the opportunity to invest in such areas under the targeted employment area guidelines, including lowered investment amounts.



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States' Role in Making TEA Determinations, Cont'd

Based upon the reasoning provided in the final rule, state-issued TEA designations under 8 CFR 204.6(i) must be in accordance with the statutory definition of targeted employment in INA §203(b)(5)(B), which requires that a targeted area either be “rural” or an “area of high unemployment.” Further, 8 CFR 204.6(i) does not provide states with the authority to make TEA designations regarding whether a certain area qualifies as “rural”. Any state TEA designation must involve the assembly and evaluation of data in a manner sufficient to arrive at a defensible finding of high unemployment within the bounds of the area to be designated in a manner that is in keeping with the statutory requirement. That is why 8 CFR 204.6(i) provides that state designations be accompanied by a description of the boundaries of the geographic areas, and explain the method or methodologies by which the unemployment statistics were obtained. While state governments clearly have the authority to make TEA designations, states governments do not have the authority to designate areas as high unemployment that do not in reality qualify as a targeted area under INA §203(b)(5)(B).



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States' Role in Making TEA Determinations, Cont'd

The designation of high unemployment areas are within the purview of each U.S. state governor, or if applicable, his or her designee.

ISOs should notify the CSC EB-5 program manager and seek guidance regarding how to address the TEA issue in petitions that contains a state designation letter that does not conform to the requirements of 8 CFR 204.6(i), utilizes statistics that do not reflect the national and local unemployment rates at the time of the alien investor's capital investment, or has been issued by an official of a state that has not notified USCIS regarding who in the state government has the authority to issue such designations.



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TEAs:

Questions?



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AILA Doc. No. 12040648. (Posted 4/11/17)

IIUSA DOC#0012012 via FOIA
(Pub: 2/24/12) - www.iiusa.org



U.S. Citizenship and Immigration Services

UNDERSTANDING TAX RETURNS

2010

TAX RETURNS

- One of the best sources of information about a business is the tax return.
- Note the different types of business tax reporting:
 1. Schedule C attached to the Form 1040 (sole proprietorship).
 2. Form 1120 or 1120S (corporation or S corporation).
 3. Form 1065 with K-1 (partnership).

- One of the best sources of information about a business is the tax return.
- 8 CFR 204.6(j) specifically mentions tax returns as evidence of lawful source of income, but tax returns also reveal information about capital investments, stock, assets, liabilities, net worth, wages, and other factors that can affect EB5 adjudication.
- How is a tax return different from a financial statement? Is a tax return more reliable than an audited financial statement? What about an unaudited one?

- Examine the Form 1040 in your course material. What do you notice about the taxpayer? Also note where the business income from Schedule C is reported.
- Examine the Schedule C. What do you notice about this business? Does it spend more on employee wages or on subcontractors who receive non-employee compensation? Make a short list of your observations.

- Note that this business has Cost of Goods Sold (COGS). Cost of Goods Sold are the direct costs attributable to the production of the goods sold by a company. This amount includes the cost of the materials used in creating the good along with the direct labor costs used to produce the good. (It excludes indirect expenses such as distribution costs and sales force costs.) If you don't see wages as an expense, sometimes they are included in the cost of labor here.
- As an example, the COGS for an automaker would include the material costs for the parts that go into making the car along with the labor costs used to put the car together. The cost of sending the cars to dealerships and the cost of the labor used to sell the car would be excluded.

- Examine the Form 1120 in your course material.
What do you notice about the business?
 - When was it created? Is it after November 29, 1990? Was it incorporated before the alien made his claimed investment? Do we need to consider whether or not there was a pre-existing business?
 - Where is it located? Does that information conflict with the petition or other documents?
 - Note that some aliens or their counsel might try to emphasize the amount of assets and equate that to their investment. However, we are looking for an investment by the petitioner, not the amount of assets the business has accumulated.

- Are wages reflected and do they corroborate the claims of the petitioner or the other documents submitted? Are there labor costs in C.O.G.S.?
- Does the information concerning the compensation of officers or their ownership percentages reflect the other evidence in the file? If you find conflicting assertions, you will need to clarify them.
- Look at the Schedule L? Note that there is a section for both the beginning and ending figures for the tax year.
- Look for information which corroborates the petitioner's assertions about amounts of stock purchased or capital contributed.

- Look for “loans from stockholders.” Many people in business prefer to make a loan to the business rather than a true investment. That way, when the amounts are paid back, there are no additional taxes due. However, capital contributed in exchange for a debt arrangement is not qualifying for EB5 purposes.

- Look for increases in “capital stock” and/or “additional paid in capital” to help demonstrate the investment. However, note that if the alien has obtained a loan for the business by risking his personal assets as collateral, this might not be readily apparent.

- In addition, you might see a withdrawal of cash or other assets on the part of the alien which reduced the amount of investment he or she is supposed to make.

- If you are trying to calculate net worth (assets – liabilities = net worth), you will also need to review this page of the return.

- Note that Form 1120S is very similar to Form 1120.
- However, S Corporations do not pay any income taxes. Instead, the corporation's income or losses are divided among and passed through to its shareholders. The shareholders must then report the income or loss on their own individual income tax returns.
- Most of the same principals of financial reporting apply to both so your review of pertinent 1120S information is basically the same as on the 1120.

- Examine the Form 1065 in your course material.
What do you notice about the business?

- When was it created? Do we need to consider whether or not there was a pre-existing business? How many partners are there?
- Where is it located? Does that information conflict with the petition or other documents?
- Note that some investors or their counsel might try to emphasize the amount of assets and equate that to their investment. However, we are looking for an investment by the petitioner, not the amount of assets the business has accumulated.

- Are wages reflected and do they corroborate the claims of the petitioner or the other documents submitted? Are there labor costs in C.O.G.S.?
- Does the information concerning the compensation of officers or their ownership percentages reflect the other evidence in the file? If you find conflicting assertions, you will need to clarify them.
- Look at the Schedule L? Note that there is a section for both the beginning and ending figures for the tax year.
- Look for information which corroborates the petitioner's assertions about amounts of stock purchased or capital contributed during the year.

- Note that Partnership Returns (1065) should be accompanied by Forms K-1, which reflect each partner's share of income, credits, and deductions.
- Note the change in the capital account during the year and remember that it can be affected by increases in contributions, gains, losses, and distributions.
- Look for information which corroborates the petitioner's assertions about amounts of capital contributed during the year as well as information which might conflict with the alien's claims.

■ *PRACTICAL EXERCISES:*

- Is it possible for an alien to have made a qualifying investment of \$1,000,000 if the assets on the tax return total only \$50,000?

✓ Yes.

- It is possible that \$1,000,000 was invested several years in the past, but that financial losses reduced the assets. It is also possible that an alien could have secured \$1,000,000 in financing secured by \$1,000,000 of his personal assets for the benefit of the enterprise.

- If an alien claims that the enterprise paid 10 employees \$40,000 each and shows 10 Forms W-2 with \$40,000 paid on each, but the wages on the 1120 reflect substantially less, should an RFE be issued to clear up the contradiction?

✓ It depends.

- If the COGS reflect labor costs which corroborate the Forms W-2, it may not be necessary. However, if there is no other apparent explanation for the lack of wages on the return, it would appear that an RFE is needed.

- If an alien claims to own 100% of the corporation's common stock, but is not listed on Schedule E, is that a problem?

✓No.

- It is possible that an alien own shares without receiving a wage or other compensation, but it should be a concern if the alien is listed as owning a different percentage of stock or if the amount of compensation is so great as to be a *de facto* return of capital.

- A Form 1120 reflects: 1) loans from shareholders of \$500,000; 2) common stock of \$500,000; and additional paid in capital of \$500,000. Is there a problem if the required capital is \$1,000,000?

✓ It depends.

- We must know how many stockholders there are and how much of the stock and contributed capital belong to the petitioner. It is possible that the combination of stock and contributed capital came from the petitioner and that the loans are immaterial; however, loans from shareholders are often a red flag and it is possible that other investors are responsible for the capital.

- An alien claims a \$500,000 investment which you later show to be a loan from shareholders. The Schedule L reflected \$500,000 in loans at the beginning of the year and \$250,000 at the end of the year. In an RFE response, Counsel argues that the alien did not intend to make a loan, but was just following normal business practices. He also shows amended tax returns have been filed changing the remaining balance of the shareholder loan to a purchase of additional stock. Is there a problem?

✓Yes.

- The fact that the loan balance was paid indicates that it was intended as a loan to be repaid. In addition, the remaining \$250,000 balance is far less than the required amount of capital.

- A tax return shows that the sole partner of a partnership made a capital contribution of \$800,000 in 2006 and another \$300,000 in 2007. She also took a distribution of \$150,000 in 2007. The partnership incurred large losses in each year. Is there a problem?

✓ Yes.

- The alien withdrew some of her investment capital, thus removing it from risk and employment creation. Subtracting the \$150,000 distribution from the \$1,100,000 she contributed leaves the investment amount at less than the required \$1,000,000. Also, since the entity incurred losses, it cannot be asserted that she merely took out some of the profits and left the investment capital intact.

- The USCIS accepts copies of tax returns and assumes that they have been filed and are thus, accurate representations of the financial situation of a business and/or an individual. However, if you suspect or have evidence that a U.S. tax return was not filed, you may request that the alien provide an Internal Revenue Service (IRS) transcript. An IRS transcript may be obtained by the taxpayer or his/her authorized representative from the Internal Revenue Service.
- Also remember, that USCIS may examine many other types of valuable probative evidence including bank statements, wire transfers, checks, contracts, and audited financial statements. Each type of evidence serves as a piece of an overall financial puzzle that you must solve to make an accurate determination.

THE END



U.S. Citizenship and Immigration Services

Form I-829 Select
Regulatory
References
2010

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.***



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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.**



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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.



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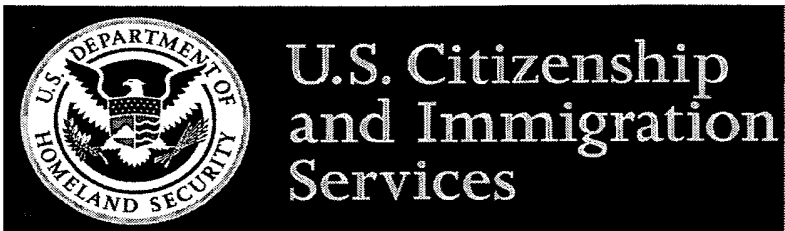
8 CFR § 216.6

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: (ii) Evidence that the alien invested or was actively in the process of investing the requisite capital. Such evidence may include, but is not limited to, an audited financial statement or other probative evidence....



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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.***



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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”.***



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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.**



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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....

What constitutes a “reasonable period of time” 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, (typically within 2 ½ years of the alien’s entry as a CPR.)



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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)....In the case of a “troubled business” as defined in 8 CFR 204.6(j)(4)(ii), evidence that the alien entrepreneur maintained the number of existing employees at no less than the pre-investment level for the period following his admission as a conditional permanent resident....Such evidence may include payroll records, relevant tax documents, and Form I-9.

Reminder: Each alien entrepreneur must create or maintain at least 10 jobs.



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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 25.2 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.**



**U.S. Citizenship
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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) 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.**



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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)(iii)..... . 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.**



**U.S. Citizenship
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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) 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. *.....

The relocation of pre-existing jobs from another location to a new location or facility based on alien investment in a new or renovated facility would not be considered to be “newly created” jobs. Any credit claimed for “newly created” jobs for qualified employees in support of an investor’s I-526/I-829 petition would need to be reconciled against any present jobs for qualified employees which have been relocated, abandoned or lost as a direct result of the EB-5 investor project.



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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) (iv) The alien created or can be expected to create within a reasonable period of time ten full-time jobs to qualifying employees*....

***“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) (iv) The alien created or can be expected to create within a reasonable period of time ten full-time jobs to qualifying employees*....

***This regulation does not specify the exact type of evidence necessary to prove that an individual is a “qualified employee” in a direct job. Typically, Form I-9 together with Quarterly Wage and Hour reports to the State and W-2’s are sufficient to make a determination as to whether the individual is a qualified employee.**



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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) (iv) The alien created or can be expected to create within a reasonable period of time ten full-time jobs to qualifying employee*.

***The I-9 attestations are may be verified in some instances through USCIS systems checks. If no contradictory data is found, then the I-9 attestations should be considered as “sufficient”.**



**U.S. Citizenship
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Questions?



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AILA Doc. No. 12040648. (Posted 4/11/17)

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Financial Statements



Basic Financial Documents

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

Income Statement

- *Shows whether a business had net income (profit) or net 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.*

US EXPORT & IMPORT, INC.

STATEMENTS OF OPERATIONS AND RETAINED EARNINGS (DEFICIT)
For the Years Ended

	<u>March 31, 1996</u>	<u>March 31, 1995</u>
SALES	\$ 244,481	\$ 29,425
Cost of Goods Sold	<u>287,349</u>	<u>64,085</u>
GROSS PROFIT (LOSS)	(42,868)	(34,660)
Operating Expenses	<u>465,733</u>	<u>94,311</u>
LOSS FROM OPERATIONS	(508,601)	(128,971)
<u>OTHER INCOME (EXPENSE):</u>		
Interest Expense	<u>(2,555)</u>	<u>(316)</u>
(LOSS) BEFORE PROVISION FOR INCOME TAXES	(511,156)	(129,287)
Provision for Income Taxes	<u>-</u>	<u>-</u>
NET (LOSS)	\$ (511,156)	\$ (129,287)
RETAINED EARNINGS (DEFICIT), BEGINNING OF YEAR	<u>(129,287)</u>	<u>-</u>
RETAINED EARNINGS (DEFICIT), END OF YEAR	\$ <u>(640,443)</u>	\$ <u>(129,287)</u>

US EXPORT & IMPORT, INC.

SCHEDULES OF OPERATING EXPENSES
For the Years Ended

	<u>March 31, 1996</u>	<u>March 31, 1995</u>
Amortization Expense	\$ 99	\$ 91
Bad Debts Expense	3,334	-
Bank Fees	395	-
Delivery and Parking Expense	2,303	1,453
Depreciation Expense	40,765	33,096
Dues and Subscriptions	1,059	228
General Insurance	7,997	1,790
Health Insurance	3,453	-
Marketing Expense	16,594	-
Meals and Entertainment	5,941	1,843
Miscellaneous	817	254
Moving Expense	-	1,118
Office Supplies	16,416	6,818
Payroll Taxes	10,025	1,530
Postage	5,734	21
Professional/Management Fees	101,701	3,150
Rent	27,551	6,697
Repairs and Maintenance	8,312	4,294
Salaries	105,624	20,000
Sales Expense	5,571	-
Taxes and Licenses	3,254	-
Telephone	14,781	3,207
Travel	80,690	8,711
Utilities	3,317	10
OPERATING EXPENSES	\$ <u>465,733</u>	\$ <u>94,311</u>

US EXPORT & IMPORT, INC.

BALANCE SHEETS

ASSETS

	<u>March 31, 1996</u>	<u>March 31, 1995</u>
<u>CURRENT ASSETS:</u>		
Cash	\$ 77,695	\$ 22,269
Accounts Receivable, Trade	59,594	800
Receivable, Other	4,270	1,750
Prepaid Expenses	2,000	-
Due from Cafeda International, Inc.	-	414
Due from US Trans, Inc.	-	6,046
Due from US Press, Inc.	7,333	1,714
Employee Advances	4,492	7,006
Total Current Assets	<u>155,384</u>	<u>39,999</u>
<u>PROPERTY AND EQUIPMENT, At Cost:</u>		
Furniture and Fixtures	44,390	42,311
Vehicles	140,998	140,998
Building	210,000	210,000
	<u>395,388</u>	<u>393,309</u>
Accumulated Depreciation	73,861	33,096
Net Property and Equipment	<u>321,527</u>	<u>360,213</u>
<u>OTHER ASSETS:</u>		
Intangible Assets, Net Accumulated Amortization of \$190 (\$91 in 1995)	306	405
Total Other Assets	<u>306</u>	<u>405</u>
TOTAL ASSETS	\$ 477,217	\$ 400,617

LIABILITIES AND STOCKHOLDERS' EQUITY

<u>CURRENT LIABILITIES:</u>		
Accounts Payable,	\$ 179,620	\$ 35,994
Taxes Withheld and Accrued	1,710	6,015
Accrued Interest	383	-
Due to US Trans, Inc.	17,809	-
Due to Cafeda, International, Inc.	98,586	-
Due to Jie Zhang	37,000	-
Current Maturities of Long-Term Debt	3,265	2,548
Total Current Liabilities	<u>338,373</u>	<u>44,557</u>
<u>LONG-TERM LIABILITIES:</u>		
Note Payable - Cargovan	11,694	14,242
	<u>11,694</u>	<u>14,242</u>
Current Maturities of Long-Term Debt	3,266	2,548
Total Long-Term Liabilities	<u>8,429</u>	<u>11,694</u>
<u>STOCKHOLDERS' EQUITY:</u>		
Common Stock, \$1.00 Par Value, 10,000,000 Shares Authorized, 100,000 Shares Issued and Outstanding	100,000	100,000
Additional Paid-in-Capital	670,858	373,653
Retained Earnings (Deficit)	(640,443)	(129,287)
Total Stockholders' Equity	<u>130,415</u>	<u>344,366</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 477,217	\$ 400,617

See accountant's compilation report.



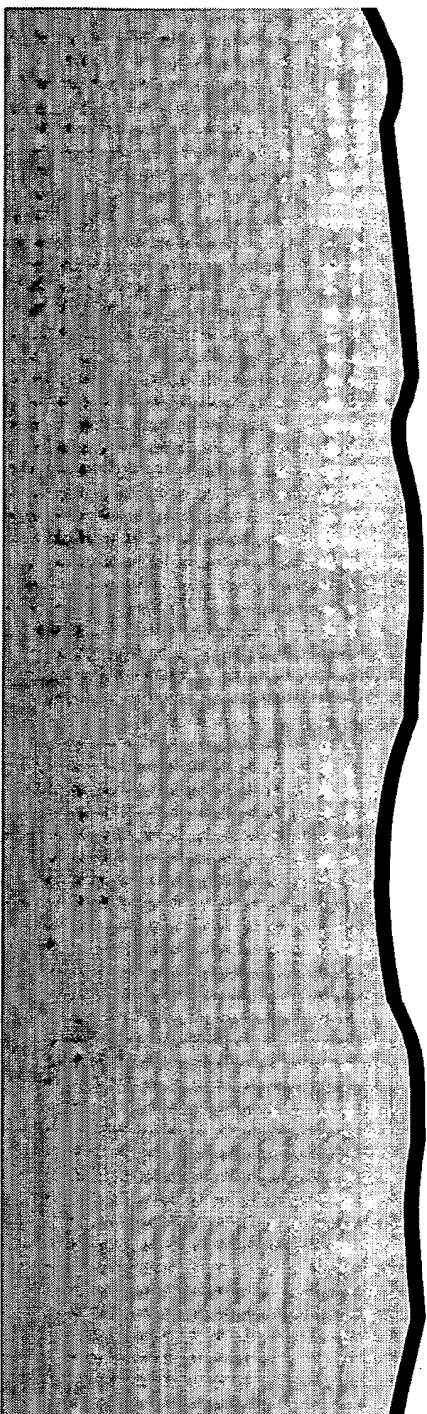
Financial Statements

- *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*
- *Not conclusive for ability to pay*



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*
- *Generally acceptable for ability to pay*

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*

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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*

BALANCE SHEETS
December 31, 2001 and 2000

ASSETS	2001	2000
CURRENT ASSETS		
Cash and cash equivalents	\$ 1,885,792	\$ 1,809,194
Trade receivables	7,541,586	8,599,136
Costs and estimated profits in excess of billings on uncompleted contracts	1,036,563	330,316
Other current assets	597,652	463,830
Due from officers and employees	97,754	80,807
Total current assets	\$ 11,159,347	\$ 11,283,283
FIXED ASSETS, net of depreciation	\$ 264,738	\$ 284,727
Total assets	\$ 11,424,085	\$ 11,568,010
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES		
Accounts payable	\$ 1,006,712	\$ 779,107
Accrued expenses	1,844,398	1,799,768
Billings in excess of costs and estimated profits on uncompleted contracts	1,216,843	2,152,083
Distribution payable	-	1,460,576
Total current liabilities	\$ 4,067,953	\$ 6,191,534
STOCKHOLDERS' EQUITY		
Common stock	\$ 28,880	\$ 28,880
Retained earnings	7,327,252	5,347,596
Total stockholders' equity	\$ 7,356,132	\$ 5,376,476
Total liabilities and stockholders' equity	\$ 11,424,085	\$ 11,568,010

See Notes to Financial Statements.

P & P CONTRACTORS, INC.

3

STATEMENTS OF INCOME
Years ended December 31, 2001 and 2000

	2001		2000	
	<u>Amount</u>	<u>%</u>	<u>Amount</u>	<u>%</u>
Job income	\$35,635,716	100.00	\$33,395,896	100.00
Direct costs	<u>29,095,117</u>	<u>81.64</u>	<u>28,144,161</u>	<u>84.27</u>
Gross profit	\$ 6,540,599	18.36	\$ 5,251,735	15.73
General and administrative expenses	<u>3,237,986</u>	<u>9.09</u>	<u>2,965,989</u>	<u>8.88</u>
Operating income	\$ 3,302,613	<u>9.27</u>	\$ 2,285,746	<u>6.85</u>
Non-operating income (expense):				
Interest and other income	\$ 51,982	.14	\$ 62,743	.18
Interest expense	<u>(1,437)</u>	<u>-</u>	<u>(2,205)</u>	<u>-</u>
	\$ 50,545	<u>.14</u>	\$ 60,538	<u>.18</u>
Income before income taxes	\$ 3,353,158	9.41	\$ 2,346,284	7.03
Income tax expense	<u>46,835</u>	<u>.13</u>	<u>61,824</u>	<u>.19</u>
Net income	\$ 3,306,323	<u>9.28</u>	\$ 2,284,460	<u>6.84</u>

* * * * *

P & P CONTRACTORS, INC.

STATEMENTS OF RETAINED EARNINGS
Years ended December 31, 2001 and 2000

Balance, beginning	\$ 5,347,596	\$ 6,072,828
Dividends	(1,326,667)	(3,009,692)
Net income	<u>3,306,323</u>	<u>2,284,460</u>
Balance, ending	\$ 7,327,252	\$ 5,347,596

See Notes to Financial Statements.



U.S. Citizenship and Immigration Services

Job Creation
2010

Statutory Job Creation Framework:

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). [Emphasis added.]



**U.S. Citizenship
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Statutory Job Creation Framework, Cont'd:

INA § 203 [8 U.S.C. 1153]

INA 203(b)(5)(B) Set-aside for targeted employment areas.-

**(i) In general. - Not less than 3,000 of the visas made available under this paragraph in each fiscal year shall be reserved for qualified immigrants who invest in a new commercial enterprise described in subparagraph (A) which will create employment in a targeted employment area.
*[emphasis added.]***

INA 203(b)(5)(D) Full-time employment defined.--In this paragraph, the term 'full-time employment' means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.



**U.S. Citizenship
and Immigration
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Regulatory Job Creation Definitions:

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.



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Regulatory Job Creation Definitions, Cont'd:

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.



Regulatory Job Creation Definitions, Cont'd:

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.



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Regulatory Job Creation Petition Requirements:

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



**U.S. Citizenship
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Regulatory TEA Job Creation Definitions:

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.



U.S. Citizenship
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Allocation of Jobs in Pooled Investments

8 CFR 204.6(g):

Multiple investors --

(1) General. 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 positions for qualifying employees. The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien entrepreneur even though there are several owners of the enterprise, including persons who are not seeking classification under section 203(b)(5) of the Act and non-natural persons, both foreign and domestic, provided that the source(s) of all capital invested is identified and all invested capital has been derived by lawful means.



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Allocation of Jobs in Pooled Investments

8 CFR 204.6(g), cont'd:

(2) Employment creation allocation. 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.



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Direct v. Indirect Jobs:

Direct jobs are actual identifiable jobs for qualified employees located within the commercial enterprise into which the EB-5 investor has directly invested his or her capital. Investors who invest in a commercial enterprise that is not affiliated with a regional center may only be credited with direct jobs.

Indirect jobs are those jobs shown to have been created collaterally or as a result of capital invested in a commercial enterprise affiliated with a regional center by an EB-5 investor. Investors who invest in a commercial enterprise that is affiliated with a regional center may be credited with direct jobs and indirect jobs.



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Induced Jobs:

There is a subset of indirect jobs that can be credited to investors who invest in a regional center-affiliated commercial enterprise that are referred to as Induced Jobs. Induced jobs are those jobs that are dependent upon the purchases of persons in direct and indirect jobs.

For example, workers who are directly or indirectly employed as the result of a highway construction program might spend some portion of their wages in their communities at grocery stores, auto repair shops, and movie theaters.



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Jobs Created in Traditionally Seasonal Industries:

USCIS has interpreted the full-time employment requirement to exclude jobs that are intermittent, temporary, seasonal or transient in nature. See, e.g., Spencer Enterprises v. U.S., 229 F.Supp.2d 1025 (E.D. Cal. 2001).

Historically, construction jobs have not been counted toward job creation because they are seen as intermittent, temporary, seasonal and transient rather than permanent. USCIS, however, now interprets that direct construction jobs may now count as permanent jobs if they are:

- Are created by the petitioner's investment; and
- Are expected to last at least two years, inclusive of when the petitioner's Form I-829 is filed.



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Jobs Creation in Regional Center-Affiliated Cases,

8 CFR 204.6(j)(4)(iii):

Immigrant Investor Pilot Program. To show that the new commercial enterprise located within a regional center approved for participation in the Immigrant Investor Pilot Program meets the statutory employment creation requirement, the petition must be accompanied by evidence that the investment will create full-time positions for not fewer than 10 persons either directly or indirectly through revenues generated from increased exports resulting from the Pilot Program. Such evidence may be demonstrated by reasonable methodologies including those set forth in paragraph (m)(3) of this section.

Note: This topic will be covered in a different session.



**U.S. Citizenship
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Maintaining Jobs in a “Troubled Business”

Regulatory Definition - 8 CFR 204.6(e):

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.



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Maintaining Jobs in a “Troubled Business”

Multiple investors are discussed in the proposed rule for the IMMACT 90 EB preference classifications (56 FR 30703) as follows:

In the legislative history of this provision, Congress noted that the alien entrepreneur should neither be restricted in choosing the form a new commercial enterprise may take nor limited in his/her ability to join with other investors, either foreign or domestic, in order to establish a viable business entity. In order to clarify the issue of multiple investors, this rule proposes that the establishment of a single new commercial enterprise could be used by more than one alien as the basis of a petition under section 203(b)(5). In such an arrangement, each individual investor must have invested or be actively in the process of investing the statutorily mandated amount for the area in which the new commercial enterprise is located, and each individual investment must result in the creation of at least 10 full-time positions for qualifying employees.



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Maintaining Jobs in a “Troubled Business”, Cont’d:

The concept of preserving jobs was not a statutory devise but first surfaced in the final rule implementing the IMMACT 90 regulations (56 FR 60897) for employment-based petitions. Here is the commentary from the preamble to the rule:

The final rule includes a definition of the term troubled business. In the proposed rule, the Service sought comments relating to the concept of job creation and its relation to job retention within a failing business. Five commenters felt that job retention should count toward meeting the statutory requirement of employment creation. Additionally, the Service determined that job retention comports with Congressional intent. See S. Debate on Conf. Rep. S 358, 136 Cong. Rec. S 17105-18 Oct. 1989). Therefore, the term "troubled business" has been defined in the final rule, and the term is referenced within the final rule at 8 CFR 204.6(j)(3)(ii) relating evidentiary requirements of employment creation.



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Maintaining Jobs in a “Troubled Business”, Cont’d:

It was Congress' intent that the EB-5 investment should be directed to investments that would create permanent year-round employment - INA §203(b)(5) states in pertinent part that EB-5 visas will be made available to alien investors who will benefit the United States economy and create full-time employment for not fewer than 10 [qualifying workers]....

Pooled investments should have an impact on the economy commensurate with the required aggregate level of investment by the group of EB-5 investors...i.e. the required level of capital investments should result in a commensurate amount of jobs, either created or maintained. Therefore, each investor must prospectively demonstrate that at least 10 jobs will be created (or maintained in the case of a “troubled business”).



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Maintaining Jobs in a “Troubled Business”, Cont’d

8 CFR 204.6(j)(4)(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.

Note: While each investor must be shown to maintain at least 10 jobs as a result of his or her capital investment. The level of employment must be maintained at no less than the pre-investment level for a period of at least two years.



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Documentation of the Creation of Direct Jobs:

There are a variety of documents that may be submitted to demonstrate the creation of direct jobs for qualified workers by the investor. This documentation may include tax returns, company payroll documentation, and state or federal payroll documentation.

Determining whether the claimed number of direct jobs have been created may involve analyzing the facts presented in this documentation, including whether:

- The aggregate payroll supports the number of direct jobs (full-time – 35 hours per week) claimed;
- The incumbents in the direct job positions appear to be qualified U.S. workers.



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IN-DEPTH EMPLOYMENT ISSUES, DEFINITIONS & FORMS:

Form W-2

1 EMPLOYER'S NAME (Print or type) AND COMPLETE MAILING ADDRESS (Print or type) CITY, STATE, ZIP+4 [®]		2 EMPLOYER'S IDENTIFICATION NUMBER (EIN) (Print or type)	
3 SOCIAL SECURITY NUMBER (Print or type)		4 TAX STATUS (Print or type)	
5 EMPLOYER'S NAME (Print or type) AND COMPLETE MAILING ADDRESS (Print or type) CITY, STATE, ZIP+4 [®]		6 EMPLOYER'S IDENTIFICATION NUMBER (EIN) (Print or type)	
7 SOCIAL SECURITY NUMBER (Print or type)		8 TAX STATUS (Print or type)	
9 EMPLOYER'S NAME (Print or type) AND COMPLETE MAILING ADDRESS (Print or type) CITY, STATE, ZIP+4 [®]		10 EMPLOYER'S IDENTIFICATION NUMBER (EIN) (Print or type)	
11 SOCIAL SECURITY NUMBER (Print or type)		12 TAX STATUS (Print or type)	
13 EMPLOYER'S NAME (Print or type) AND COMPLETE MAILING ADDRESS (Print or type) CITY, STATE, ZIP+4 [®]		14 EMPLOYER'S IDENTIFICATION NUMBER (EIN) (Print or type)	
15 SOCIAL SECURITY NUMBER (Print or type)		16 TAX STATUS (Print or type)	
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19 SOCIAL SECURITY NUMBER (Print or type)		20 TAX STATUS (Print or type)	
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35 SOCIAL SECURITY NUMBER (Print or type)		36 TAX STATUS (Print or type)	
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39 SOCIAL SECURITY NUMBER (Print or type)		40 TAX STATUS (Print or type)	
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43 SOCIAL SECURITY NUMBER (Print or type)		44 TAX STATUS (Print or type)	
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47 SOCIAL SECURITY NUMBER (Print or type)		48 TAX STATUS (Print or type)	
49 EMPLOYER'S NAME (Print or type) AND COMPLETE MAILING ADDRESS (Print or type) CITY, STATE, ZIP+4 [®]		50 EMPLOYER'S IDENTIFICATION NUMBER (EIN) (Print or type)	
51 SOCIAL SECURITY NUMBER (Print or type)		52 TAX STATUS (Print or type)	
53 EMPLOYER'S NAME (Print or type) AND COMPLETE MAILING ADDRESS (Print or type) CITY, STATE, ZIP+4 [®]		54 EMPLOYER'S IDENTIFICATION NUMBER (EIN) (Print or type)	
55 SOCIAL SECURITY NUMBER (Print or type)		56 TAX STATUS (Print or type)	
57 EMPLOYER'S NAME (Print or type) AND COMPLETE MAILING ADDRESS (Print or type) CITY, STATE, ZIP+4 [®]		58 EMPLOYER'S IDENTIFICATION NUMBER (EIN) (Print or type)	
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75 SOCIAL SECURITY NUMBER (Print or type)		76 TAX STATUS (Print or type)	
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83 SOCIAL SECURITY NUMBER (Print or type)		84 TAX STATUS (Print or type)	
85 EMPLOYER'S NAME (Print or type) AND COMPLETE MAILING ADDRESS (Print or type) CITY, STATE, ZIP+4 [®]		86 EMPLOYER'S IDENTIFICATION NUMBER (EIN) (Print or type)	
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89 EMPLOYER'S NAME (Print or type) AND COMPLETE MAILING ADDRESS (Print or type) CITY, STATE, ZIP+4 [®]		90 EMPLOYER'S IDENTIFICATION NUMBER (EIN) (Print or type)	
91 SOCIAL SECURITY NUMBER (Print or type)		92 TAX STATUS (Print or type)	
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97 EMPLOYER'S NAME (Print or type) AND COMPLETE MAILING ADDRESS (Print or type) CITY, STATE, ZIP+4 [®]		98 EMPLOYER'S IDENTIFICATION NUMBER (EIN) (Print or type)	
99 SOCIAL SECURITY NUMBER (Print or type)		100 TAX STATUS (Print or type)	

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

Copy C—For EMPLOYER'S RECORDS (See Notice to Recipients on the back of Copy D.)

2008

DEPARTMENT OF THE TREASURY—FEDERAL RESERVE BOARD

SALE, SOLELY, PARTIAL USE



U.S. Citizenship and Immigration Services

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(Pub: 2/24/12) - www.iiusa.org

Questions?



U.S. Citizenship
and Immigration
Services

AILA Doc. No. 12040648. (Posted 4/11/17)

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(Pub: 2/24/12) - www.iiusa.org

Schedule K-1
(Form 1065)Department of the Treasury
Internal Revenue Service

2007

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.

☐ Final K-1☐ Amended K-1

OMB No. 1545-0099

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 <input type="checkbox"/> 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 <input type="checkbox"/> General partner or LLC member-manager <input type="checkbox"/> Limited partner or other LLC member																					
H <input checked="" type="checkbox"/> Domestic partner <input type="checkbox"/> Foreign partner																					
I What type of entity is this partner? _____																					
J Partner's share of profit, loss, and capital:																					
	<table border="1"> <thead> <tr> <th></th> <th>Beginning</th> <th>%</th> <th>Ending</th> <th>%</th> </tr> </thead> <tbody> <tr> <td>Profit</td> <td></td> <td></td> <td>98</td> <td>%</td> </tr> <tr> <td>Loss</td> <td></td> <td></td> <td>98</td> <td>%</td> </tr> <tr> <td>Capital</td> <td></td> <td></td> <td>98</td> <td>%</td> </tr> </tbody> </table>		Beginning	%	Ending	%	Profit			98	%	Loss			98	%	Capital			98	%
	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																					
<input type="checkbox"/> Tax basis <input type="checkbox"/> GAAP <input type="checkbox"/> Section 704(b) book <input type="checkbox"/> Other (explain)																					

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items			
1	Ordinary business income (loss)	15	Credits
	4,503		
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			

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.

- 1. Ordinary business income (loss).** You must first determine whether the income (loss) is passive or nonpassive. Then enter on your return as follows:

	Report on
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 (i)

- 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%)	Form 4952, line 1
G Investment interest expense	
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	

Code	Report on
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(j)(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	

U.S. Corporation Income Tax Return

OMB No. 1545-0123

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

2007

A Check if: 1a Consolidated return (attach Form 851) <input type="checkbox"/> b Life/nonlife consolidated return <input type="checkbox"/> 2 Personal holding co. (attach Sch. PH) <input type="checkbox"/> 3 Personal service corp. (see instructions) <input type="checkbox"/> 4 Schedule M-3 attached <input type="checkbox"/>		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		
30 Taxable income. Subtract line 29c from line 28 (see instructions)					30	15,767	
31 Total tax (Schedule J, line 10)					31	2,365	
Tax and Payments	32a 2006 overpayment credited to 2007	32a					
	b 2007 estimated tax payments	32b					
	c 2007 refund applied for on Form 4466	32c					
	d Tax deposited with Form 7004	32d					
	e Credits: (1) Form 2439 (2) Form 4136	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					36	

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.

Sign Here

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)

IIUSA DOC#0012012 via FOIA

AILA Doc. No. 12040648. (Posted 4/11/17)

(Pub: 2/24/12) - www.iiusa.org

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		(f) Amount of compensation
			(d) Common	(e) Preferred	
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))	<input type="checkbox"/>	
2	Income tax. Check if a qualified personal service corporation (see instructions)	<input type="checkbox"/>	2
3	Alternative minimum tax (attach Form 4626)		3
4	Add lines 2 and 3		4
5a	Foreign tax credit (attach Form 1118)		5a
5b	Credits from Forms 5735 and 8834		5b
5c	General business credit. Check applicable box(es): <input type="checkbox"/> Form 3800 <input type="checkbox"/> Form 5884 <input type="checkbox"/> Form 6478 <input type="checkbox"/> Form 8835, Section B <input type="checkbox"/> Form 8844 <input type="checkbox"/> Form 8846		5c
5d	Credit for prior year minimum tax (attach Form 8827)		5d
5e	Bond credits from: <input type="checkbox"/> Form 8860 <input type="checkbox"/> 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: <input type="checkbox"/> Form 4255 <input type="checkbox"/> Form 8611 <input type="checkbox"/> Form 8697 <input type="checkbox"/> Form 8866 <input type="checkbox"/> Form 8902 <input type="checkbox"/> 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 <input type="checkbox"/> Cash b <input type="checkbox"/> Accrual c <input type="checkbox"/> 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.		✓
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. <input type="checkbox"/> 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 <input type="checkbox"/> 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		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(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):	
2	Federal income tax per books	2,187		Tax-exempt interest \$	
3	Excess of capital losses over capital gains				
4	Income subject to tax not recorded on books this year (itemize):				
5	Expenses recorded on books this year not deducted on this return (itemize):		8	Deductions on this return not charged against book income this year (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

Label

(See instructions on page 12.)

Use the IRS label.

Otherwise, please print or type.

Presidential

Election Campaign

For the year Jan. 1–Dec. 31, 2007, or other tax year beginning , 2007, ending , 20

OMB No. 1545-0074

L
A
B
E
L

H
E
R
E

Your first name and initial

TRAINING

Last name

EXAMPLE

If a joint return, spouse's first name and initial

Last name

Home address (number and street). If you have a P.O. box, see page 12.

Apt. no.

City, town or post office, state, and ZIP code. If you have a foreign address, see page 12.

Your social security number

Spouse's social security number

▲ You must enter your SSN(s) above. ▲

Checking a box below will not change your tax or refund.

Check here if you, or your spouse if filing jointly, want \$3 to go to this fund (see page 12) ▶

☐ You ☐ Spouse

Filing Status

1 ☐ Single2 ☐ Married filing jointly (even if only one had income)3 ☐ Married filing separately. Enter spouse's SSN above and full name here. ▶4 ☐ Head of household (with qualifying person). (See page 13.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶5 ☐ Qualifying widow(er) with dependent child (see page 14)

Check only one box.

Exemptions

6a ☐ Yourself. If someone can claim you as a dependent, do not check box 6ab ☐ Spouse

c Dependents:

(1) First name

Last name

(2) Dependent's social security number

(3) Dependent's relationship to you

(4) ☒ If qualifying child for child tax credit (see page 15)

Boxes checked on 6a and 6b

No. of children on 6c who:

• lived with you
• did not live with you due to divorce or separation (see page 16)

Dependents on 6c not entered above

Add numbers on lines above ▶

If more than four dependents, see page 15.

d Total number of exemptions claimed

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a W-2, see page 19.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

7 Wages, salaries, tips, etc. Attach Form(s) W-2

8a Taxable interest. Attach Schedule B if required

b Tax-exempt interest. Do not include on line 8a

8b

9a Ordinary dividends. Attach Schedule B if required

b Qualified dividends (see page 19)

9b

10 Taxable refunds, credits, or offsets of state and local income taxes (see page 20)

11 Alimony received

12 Business income or (loss). Attach Schedule C or C-EZ

13 Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ ☐

14 Other gains or (losses). Attach Form 4797

15a IRA distributions

15a

b Taxable amount (see page 21)

16a Pensions and annuities

16a

b Taxable amount (see page 22)

17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E

18 Farm income or (loss). Attach Schedule F

19 Unemployment compensation

20a Social security benefits

20a

b Taxable amount (see page 24)

21 Other income. List type and amount (see page 24)

22 Add the amounts in the far right column for lines 7 through 21. This is your total income ▶

23 Educator expenses (see page 26)

24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ

25 Health savings account deduction. Attach Form 8889

26 Moving expenses. Attach Form 3903

27 One-half of self-employment tax. Attach Schedule SE

28 Self-employed SEP, SIMPLE, and qualified plans

29 Self-employed health insurance deduction (see page 26)

30 Penalty on early withdrawal of savings

31a Alimony paid b Recipient's SSN ▶

32 IRA deduction (see page 27)

33 Student loan interest deduction (see page 30)

34 Tuition and fees deduction. Attach Form 8917

35 Domestic production activities deduction. Attach Form 8903

36 Add lines 23 through 31a and 32 through 35

37 Subtract line 36 from line 22. This is your adjusted gross income ▶

Adjusted Gross Income

7

8a 200,000

9a

10

11

12 38,555

13

14

15b

16b

17

18

19

20b

21

22 238,555

23

24

25

26

27 2410

28

29

30

31a

32

33

34

35

36 2410

37 236,145

Tax and Credits**Standard Deduction for—**

• People who checked any box on line 39a or 39b or who can be claimed as a dependent, see page 31.

• All others:

Single or Married filing separately, \$5,350

Married filing jointly or Qualifying widow(er), \$10,700

Head of household, \$7,850

38	Amount from line 37 (adjusted gross income)	38	
39a	Check <input type="checkbox"/> You were born before January 2, 1943, <input type="checkbox"/> Blind. Total boxes		
if:	<input type="checkbox"/> Spouse was born before January 2, 1943, <input type="checkbox"/> Blind. checked ▶ 39a		
b	If your spouse itemizes on a separate return or you were a dual-status alien, see page 31 and check here ▶ 39b <input type="checkbox"/>		
40	Itemized deductions (from Schedule A) or your standard deduction (see left margin)	40	
41	Subtract line 40 from line 38	41	
42	If line 38 is \$117,300 or less, multiply \$3,400 by the total number of exemptions claimed on line 6d. If line 38 is over \$117,300, see the worksheet on page 33	42	
43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	
44	Tax (see page 33). Check if any tax is from: a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972 c <input type="checkbox"/> Form(s) 8889	44	
45	Alternative minimum tax (see page 36). Attach Form 6251	45	
46	Add lines 44 and 45	46	
47	Credit for child and dependent care expenses. Attach Form 2441	47	
48	Credit for the elderly or the disabled. Attach Schedule R	48	
49	Education credits. Attach Form 8863	49	
50	Residential energy credits. Attach Form 5695	50	
51	Foreign tax credit. Attach Form 1116 if required	51	
52	Child tax credit (see page 39). Attach Form 8901 if required	52	
53	Retirement savings contributions credit. Attach Form 8880	53	
54	Credits from: a <input type="checkbox"/> Form 8396 b <input type="checkbox"/> Form 8859 c <input type="checkbox"/> Form 8839	54	
55	Other credits: a <input type="checkbox"/> Form 3800 b <input type="checkbox"/> Form 8801 c <input type="checkbox"/> Form	55	
56	Add lines 47 through 55. These are your total credits	56	
57	Subtract line 56 from line 46. If line 56 is more than line 46, enter -0-	57	

Other Taxes

58	Self-employment tax. Attach Schedule SE	58	
59	Unreported social security and Medicare tax from: a <input type="checkbox"/> Form 4137 b <input type="checkbox"/> Form 8919	59	
60	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	60	
61	Advance earned income credit payments from Form(s) W-2, box 9	61	
62	Household employment taxes. Attach Schedule H	62	
63	Add lines 57 through 62. This is your total tax	63	

Payments

If you have a qualifying child, attach Schedule EIC.

64	Federal income tax withheld from Forms W-2 and 1099	64	
65	2007 estimated tax payments and amount applied from 2006 return	65	
66a	Earned income credit (EIC)	66a	
b	Nontaxable combat pay election ▶ 66b		
67	Excess social security and tier 1 RRTA tax withheld (see page 59)	67	
68	Additional child tax credit. Attach Form 8812	68	
69	Amount paid with request for extension to file (see page 59)	69	
70	Payments from: a <input type="checkbox"/> Form 2439 b <input type="checkbox"/> Form 4136 c <input type="checkbox"/> Form 8885	70	
71	Refundable credit for prior year minimum tax from Form 8801, line 27	71	
72	Add lines 64, 65, 66a, and 67 through 71. These are your total payments	72	

Refund

Direct deposit? See page 59 and fill in 74b, 74c, and 74d, or Form 8888.

73	If line 72 is more than line 63, subtract line 63 from line 72. This is the amount you overpaid	73	
74a	Amount of line 73 you want refunded to you . If Form 8888 is attached, check here ▶ <input type="checkbox"/>	74a	
b	Routing number	c	Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings
d	Account number		
75	Amount of line 73 you want applied to your 2008 estimated tax ▶	75	

Amount You Owe

76	Amount you owe. Subtract line 72 from line 63. For details on how to pay, see page 60 ▶	76	
77	Estimated tax penalty (see page 61)	77	

Third-Party Designee

Do you want to allow another person to discuss this return with the IRS (see page 61)? ☐ **Yes.** Complete the following. ☐ **No**

Designee's name ▶	Phone no. ▶ ()	Personal identification number (PIN) ▶
-------------------	-----------------	--

Sign Here

Joint return? See page 13. Keep a copy for your records.

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

Your signature	Date	Your occupation	Daytime phone number ()
Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation	

Paid Preparer's Use Only

Preparer's signature ▶	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code ▶	EIN	Phone no. ()	

Form **1120S****U.S. Income Tax Return for an S Corporation**

OMB No. 1545-0130

2007Department of the Treasury
Internal Revenue Service

► 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.

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
		Number, street, and room or suite no. If a P.O. box, see instructions.	E Date incorporated
		City or town, state, and ZIP code	F Total assets (see instructions)
B Business activity code number (see instructions)			\$
C Check if Sch. M-3 attached <input type="checkbox"/>			

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 signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
Preparer's Use Only	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. 11510H

Form **1120S** (2007)**IIUSA DOC#0012012 via FOIA**

AILA Doc. No. 12040648. (Posted 4/11/17)

(Pub: 2/24/12) - www.iiusa.org

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 <input type="checkbox"/> Cash b <input type="checkbox"/> Accrual c <input type="checkbox"/> 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 ▶ <input type="checkbox"/> 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
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): ▶ <input type="checkbox"/> Paid <input type="checkbox"/> 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		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(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):
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):	a	Tax-exempt interest \$
3	Expenses recorded on books this year not included on Schedule K, lines 1 through 12 and 14l (itemize):	6	Deductions included on Schedule K, lines 1 through 12 and 14l, not charged against book income this year (itemize):
a	Depreciation \$	a	Depreciation \$
b	Travel and entertainment \$	7	Add lines 5 and 6.
4	Add lines 1 through 3.	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		

**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

Social security number (SSN)

TRAINING EXAMPLE

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 <input type="checkbox"/>	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):	20	
11	Contract labor (see page C-4)	11	2000	20a	a Vehicles, machinery, and equipment	20a	
12	Depletion	12		20b	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	
14	Employee benefit programs (other than on line 19)	14		22	Supplies (not included in Part III)	22	
15	Insurance (other than health)	15		23	Taxes and licenses	23	
16	Interest:			24	Travel, meals, and entertainment:		
16a	a Mortgage (paid to banks, etc.)	16a		24a	a Travel	24a	
16b	b Other	16b		24b	b Deductible meals and entertainment (see page C-6)	24b	
17	Legal and professional services	17	500	25	Utilities	25	
				26	Wages (less employment credits)	26	500
				27	Other expenses (from line 48 on page 2)	27	

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.

For Paperwork Reduction Act Notice, see page C-8 of the instructions.

Cat. No. 11334P

Schedule C (Form 1040) 2007

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

If "Yes," attach explanation ☐ Yes ☐ No

35	4,000	
36	1,000	
37	2,000	
38	5,000	
39		
40		
41	2,000	
42	10,000	

42 Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on page 1, line 4

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

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

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

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

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

U.S. Return of Partnership Income

OMB No. 1545-0099

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

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		
	2 Cost of goods sold (Schedule A, line 8)			1c	81,755
	3 Gross profit. Subtract line 2 from line 1c.			2	66,191
	4 Ordinary income (loss) from other partnerships, estates, and trusts (attach statement).			3	15,564
	5 Net farm profit (loss) (attach Schedule F (Form 1040))			4	
	6 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)			5	
	7 Other income (loss) (attach statement)			6	
8 Total income (loss). Combine lines 3 through 7			7		
Deductions (see the instructions for limitations)	9 Salaries and wages (other than to partners) (less employment credits)			8	15,564
	10 Guaranteed payments to partners			9	
	11 Repairs and maintenance			10	
	12 Bad debts			11	
	13 Rent			12	
	14 Taxes and licenses			13	
	15 Interest			14	
	16a Depreciation (if required, attach Form 4562)	16a		15	
	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. ()

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 11390Z

Form **1065** (2007)

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**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 ▶

Yes No

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 <input type="checkbox"/> Accrued <input type="checkbox"/>	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		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(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):	
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):		a Tax-exempt interest \$	
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):	
4 Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 16l (itemize):		a Depreciation \$	
a Depreciation \$		8 Add lines 6 and 7	
b Travel and entertainment \$		9 Income (loss) (Analysis of Net Income (Loss), line 1). Subtract line 8 from line 5	7,530
5 Add lines 1 through 4	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	8 Add lines 6 and 7	
4 Other increases (itemize):		9 Balance at end of year. Subtract line 8 from line 5	415,530
5 Add lines 1 through 4	415,530		

25.2 Entrepreneurs [Updated 12-21-2006]

(a) Commitment to Trained and Experienced Officers . [Revised 06-17-2009]

All USCIS offices must ensure that only officers who have been specially trained and certified by USCIS Headquarters EB-5 program management adjudicate EB-5 immigrant investor casework. In addition, all such offices must ensure that the officers adjudicating petitions on Form I-829 have received training in the Marriage Fraud Amendment System (MFAS).

The California Service Center director, regional directors and field office directors in offices with a high volume of Form I-829 s shall designate an EB-5 trained and certified officer as an EB-5 point of contact (POC) to facilitate the review and management of Form I-829. For purposes of clarity in these instructions, references to Service Center management and field office management includes the appropriate EB-5 POC.

(b) Filing the Form I-829. [Revised 06-17-2009]

These instructions provide procedures consistent with those provided for the adjudication of Form I-751 , Petition to Remove Conditions on Residence (for alien spouse) where possible. Under 8 CFR 216.6(a) , immigrant investors in conditional resident status must file a Form I-829 at the appropriate Service Center within 90 days prior to the second anniversary of their admission to the United States as a conditional permanent resident.

Note:

The instructions in *AFM Chapter 25.2(b)* also apply to processing Form I-829 s for spouses and dependent children pursuant to 8 CFR 216.6(a)(1) and (6) (i.e. derivatives, who subsequent to obtaining conditional resident status are: (1) children who are married, (2) former spouses who are divorced from the principal, and (3) widow or widowers of the principal alien investor).

Officers are reminded that, in accordance with the Notice in the Federal Register at 74 FR 912 , published on, and in effect since, January 9, 2009, Form I-829 petitions are to be filed with the California Service Center.

See Chapters 25.2(i)(1)(A) and 25.2(i)(2) for procedures when a Form I-829 has not been timely filed.

(c) Receipt of Form I-829.

Parallel to the procedures for processing Form I-751, Petition to Remove Conditions on Residence, upon receipt of Form I-829, the service center director shall issue the conditional resident a fee receipt notice on Form I-797 that includes the following paragraph:

Your Permanent Resident Card (Form I-551), also known as a "green card," is extended one (1) year – employment and travel is authorized during this extension. Processing your petition for removal of conditions will require a minimum of one hundred and twenty (120) days. Thirty (30) days before the expiration of this extension, if you have not been notified by USCIS of a decision on your petition, please contact the field office nearest to where you are living for further documentation for employment and/or travel purposes.

(d) Notice.

A receipt notice and any written notice of any decision, request for evidence (RFE) or interview appointment should be provided to the conditional resident if he or she is not represented.

However, for other than receipt notices, if the conditional resident is represented as evidenced by a signed Form G-28, the notice should be sent to the attorney or representative of record and, in the case of a denial or termination of conditional resident status, to the conditional resident as well.

Any transfer notice should state that as necessary the conditional resident may take his or her receipt notice to the nearest field office and receive evidence of status in accordance with procedures set forth in paragraph (k) below.

(e) Adjudication by a Service Center. [Ch 25.2(e) revised 06-17-2009]

With respect to a properly filed Form I-829, a Service Center may approve the petition or issue an RFE. Service Center Directors also have now been delegated the authority to deny a Form I-829 if the eligibility requirements under section 216A and 8 CFR 216.6(c) have not been met or refer it to a field office for adjudication. See Notes below.

There is no appeal of a denial of a Form I-829; however, a conditional resident may seek review of the decision in removal proceedings. 8 CFR 216.6(d)(2).

Note:

Although Service Center directors have been delegated the authority deny a Form I-829 , as indicated above, only the California Service Center adjudicates Form I-829 EB-5 petitions.

Note:

Section 216A(d)(3) of the Act provides USCIS with authority to waive the deadline for an interview or the interview itself, if that is appropriate. Accordingly, an interview is not required to either approve or deny the petition. Under current regulations, both Service Center and district directors have authority in appropriate cases to waive the interview and adjudicate the petition.

However, in the past, a Service Center Director only had authority to waive an interview if the petition was approvable. A Service Center Director could not waive the interview if the petition appeared to be deniable.

As noted above, the authority to waive the interview and deny the Form I-829 has been delegated to Service Center Directors. Service Center Directors may waive the interview and deny the petition if they determine that, upon review of the petition supporting evidence, the conditional resident has not met the eligibility requirements for removal of the conditions.

Note:

The guidance does not pertain to the denial of Form I-829 s for those aliens who may qualify for benefits based on the provisions of the 21st Century Department of Justice Appropriations Authorization Act of 2001, **Public Law 107-273**, 116 Stat. 1757 (Nov. 2, 2002). Until such time as regulations are promulgated implementing the procedures regarding the denial of Form I-829s affected by Public Law 107-273, such cases will be not be denied by Service Center or field office directors.

(1) **Function of Form I-829 .**

A Form I-829 petition is intended to examine whether the alien entrepreneur has satisfied the conditions of his admission to the United States. Primarily, USCIS is determining whether the alien has invested the requisite capital and created the requisite jobs through that investment. Form I-829 petition is to be filed within 90 days prior to the second anniversary of the alien's admission to the ""United States"" in conditional resident status.

(2) **Initial Review .**

The service center must initially review the petition in order to determine which course to take. The petition must be adjudicated with the A-file and normal procedures are to be

followed for requesting the A-file (see paragraph (f) for procedures in the event of delay in receipt of a requested A-file).

In addition, the service center is to follow normal procedures for consultation and referral to operational and investigative units such as the Office of Fraud Detection & National Security (FDNS) if the facts of the case warrant it and where appropriate. If necessary, such units may coordinate the referral of a Form I-829 to the Department of Treasury's Financial Crimes Enforcement Network (FINCEN) with a request for appropriate research.

(3) Request for Evidence. [Chapter 25.2(d)(3) update effective June 18, 2007.]

In situations where required initial evidence is submitted but does not establish eligibility, USCIS may deny the petition for ineligibility. 8 CFR 103.2(b)(8)(iii).

Alternatively, USCIS may request more evidence. USCIS may assign flexible times for petitioners to submit a response to a request for evidence (RFE). AFM Appendix 10-9 sets general timeframes for applicants or petitioners to respond RFEs. However, the maximum time to respond cannot exceed 12 weeks. 8 CFR 103.2(b)(8)(iv). See AFM Chapter 25.2 for instructions regarding receipt of a conditional resident's response to an RFE.

- If an applicant or petitioner does not respond to an RFE by the required date, USCIS may summarily deny the application or petition as abandoned or deny the application or petition on the record. However, it is a better practice for USCIS to deny the application or petition for both reasons.

* * *

If the questions on the RFE cannot be answered in writing, the petition must be referred for an interview.

Note

See Chapter 10.5 for a detailed explanation of requests for evidence and responses to a notice to deny.

(4) Derogatory Information.

In accordance with 8 CFR 216.6(c)(2), if the review of the petition, or the interview itself, reveals derogatory information concerning the requirements for removal of conditions,

the service center shall provide the conditional resident with the opportunity to rebut such information pursuant to paragraph (h) of this instruction.

(E) Form I-829 Consideration of Form I-526 EB-5 Eligibility Requirements. [Added 12-11-2009]

Pursuant to section 216A(c)(3) of the Act, USCIS must determine that the facts and information contained in the petition are true. ISOs should generally give deference to the approval of EB-5 eligibility requirements previously made in the alien investor's Form I-526 petition and affiliated regional center designation, as applicable, if the facts presented in the earlier proceedings remain unchanged to include:

- The new commercial enterprise's capital investment structure;
- That the commercial enterprise qualifies as "new" for EB-5 purposes;
- If the commercial enterprise is affiliated with a regional center, the direct and indirect job creation methodology;
- If the Form I-526 petition was approved for reduced capital investment threshold of \$500,000, that the new commercial enterprise was located in a TEA at the time of filing of the Form I-526, and;
- That the alien investor's investment capital was lawfully obtained.

The CSC EB-5 program manager should be notified to determine the appropriate action to take if an ISO discovers during the adjudication of the Form I-829 petition that:

- Documentation relating to the regional center's capital investment structure or job creation methodologies or the eligibility requirements favorably decided-upon in the Form I-526 petition have materially changed post-approval of the regional center designation or Form I-526 petition;
- The record contains evidence of fraud or misrepresentation; or
- The evidence of record indicates that the previously favorable decision to approve the regional center proposal (or amendment) was legally deficient.

If the documentation of record presents material inconsistencies that impact the alien investor's EB-5 eligibility, then ISOs should require the petitioner to resolve the inconsistencies prior making a favorable determination in the case. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Note

EB-5 petitioners must establish eligibility as of the date of filing of the petition. See **8 CFR 103.2(b)(1), (12)**; *Matter of Katigbak*, 14 I&N Dec. at 49. Note also that a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *Matter of Izummi*, **22 I&N Dec. at 175**.

(5) **Approval**.

The service center may approve a **Form I-829** if USCIS is satisfied that the conditional resident has met all the requirements for the removal of the conditions as specified under **Section 216A** of the Act and **8 CFR 216.6(c)(1)**, namely that:

- (A) a commercial enterprise was established by the conditional resident;
- (B) the conditional resident invested or was actively in the process of investing the requisite capital;
- (C) the conditional resident sustained the establishment and investment activities throughout the relevant period of his or her residence in the United States (i.e., the conditional resident, 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); and
- (D) **[Revised 06-17-2009]** the conditional resident created or can be expected to create within a reasonable period of time ten full-time jobs for qualifying employees.

Note

In the case of a "troubled business" as defined in **8 CFR 204.6(j)(4)(ii)**, the conditional resident must establish that he or she maintained the number of existing employees at no less than the pre-investment for the previous two years.

In addition, pursuant to section 216A(c)(3) of the Act, USCIS must also determine that the facts and information contained in the petition are true. Recognizing that circumstances may change after an alien secures admission to the United States, USCIS chose to implement INA 216A with some "flexibility." See, 59 FR 1317 at 1, 18 (Jan. 10, 1994) (proposed rule). Consistent with this flexibility, USCIS provides that Form I-829 must contain evidence that the petitioning alien "has created or can be expected to create within a reasonable time 10 fulltime jobs for qualifying employees." 8 CFR 216.6(a)(4)(iv).

In making the "reasonable time" determination, officers should consider the evidence submitted along with the petition that demonstrates when the jobs are expected to be created, the reasons that the jobs were not created as predicted in Form I-526, the nature of the industry or industries in which the jobs are to be created, and any other evidence submitted by the petitioner.

If after considering the evidence, the officer determines that the jobs are more likely than not going to be created within a reasonable time, Form I-829 should be approved consistent with 8 CFR 216.6(d)(1) if the petitioner is otherwise eligible to have his or her conditions removed. If, however, the officer determines that the jobs will not be created within a reasonable period of time, Form I-829 should be denied consistent with 8 CFR 216.6(d)(2).

(6) Action upon Approval.

If the petition is approved, the service center will remove the conditions on the conditional resident's status as of the second anniversary of his or her admission as a conditional permanent resident. 8 CFR 216.6(d).

If biometrics have not already been collected at an Application Support Center (ASC), the conditional resident must be notified to report for processing of a new permanent resident card (Form I-551). Normal procedures should be followed for entering the decision into MFAS and for card production.

(7) Denial.

The service center may deny a petition if the initial review of the petition or review of a response to a request for initial and/or additional evidence reveals that the requirements for removal of conditions, as prescribed under Section 216A of the Act and the regulation at 8 CFR 216.6(c)(1), have not been met and the service center adjudicator determines that the case can be denied without an interview.

(A) Grounds for Denial.

USCIS may deny a Form I-829 on the following grounds:

(i) Denial Due to Alien's Failure to Meet the Statutory and Regulatory Requirements as a Factual Matter.

USCIS lacks authority to grant a Form I-829 if the petition does not meet the statutory and regulatory requirements. If the service center director determines that the conditional resident has not established eligibility to have the conditions removed under the statute and regulations, the petition must be denied.

(ii) Denial due to fraud or other criminal grounds.

When it is determined that a petition may be deniable for fraud or other criminal grounds, the Form I-829 must first be referred to the FDNS POC in the service center in accordance with the Fraud Detection Standard Operating Procedures.

The processing site may also coordinate the referral of a Form I-829 to FINCEN with a request for appropriate research. USCIS shall not make a final decision on the petition until a report of the results of the referral or investigation is obtained.

In most instances, if the decision to deny the petition is based on derogatory information considered by the service center of which the petitioner is unaware, he or she shall be advised of this fact and offered an opportunity to rebut the information and present evidence in his or her own behalf prior to a final decision being rendered by USCIS. See 8 CFR 103.2(b)(16)(i).

(B) Action upon Denial.

The service center director shall provide written notice in accordance with 8 CFR 216.6(d)(2) if the petition is denied and shall follow established procedures for the issuance of an NTA to initiate removal proceedings. No appeal shall lie from this decision. The conditional resident may seek review of the decision to deny the petition in removal proceedings. In issuing this denial notice, the service center director shall:

(i) Advise the conditional resident of the specific reasons for the denial and that:

- ☐ ☐ ☐ the conditional resident's status, and that of his or her spouse or children, is terminated as of the date of the decision;

- ☐ ☐ ☐ the conditional resident must surrender to the field office any permanent resident card, Form I-551, previously issued by legacy INS or USCIS; and

- ☐ ☐ ☐ there is no appeal from the decision, although the conditional resident may seek review of the decision in removal proceedings;

(ii) Follow established procedures for the issuance of an NTA to initiate removal proceedings.

(iii) Enter the denial information into MFAS.

(iv) Ensure that the A-file includes all relevant documents and is forwarded to the appropriate office.

(7) Referral to Field Office.

The service center director may refer a Form I-829 to a field office if he or she determines that referral is appropriate and that an interview is necessary to adjudicate the petition and render a decision in the case.

When transferring a Form I-829 to a field office, the service center should indicate the basis for referral in a memorandum to the field office. In that memorandum, the service center also may specifically recommend that an interview be conducted as part of the field office's review and adjudication.

Such a recommendation must: (i) be clearly identified in the memorandum, (ii) detail the reasons for the interview recommendation, and (iii) include specifics as to questions the service center recommends the field office ask the conditional resident during the interview.

After coordination with the regional EB-5 POC, service centers shall transfer the referred cases to the assigned field office by express mail, flagging it in red marker "**to the attention of the EB-5 POC** ." The service center must record the referral of the case in MFAS in accordance with routine procedures and update the Central Index System (CIS) accordingly.

(f) Regional Office Coordination.

Each regional director shall designate an officer in their regional office to coordinate the

management of Form I-829s within each region's jurisdiction. The responsibilities of the regional EB-5 POCs include:

- (1) Determining appropriate field offices to receive Form I-829 s;
- (2) Coordinating referral procedures;
- (3) Ensuring that Form I-829s referred to field offices are adjudicated by EB-5 trained and certified field office adjudicators;
- (4) Facilitating the return of petitions to service centers as appropriate; and
- (5) Keeping track of Form I-829 processing and cases within the jurisdiction of the region.

The regional EB-5 POC is also responsible for assisting when a requested A-file has not been received within the appropriate period of time and for requesting A-files according to established procedures.

The regional EB-5 POC shall keep a list of field offices with trained EB-5 adjudicators, and shall coordinate service center referrals of Form I-829s to the field offices. The regional EB-5 POCs shall direct the referral in accordance with the availability of trained EB-5 adjudicators at the appropriate field office, and may direct the referral of a Form I-829 to another office as necessary or to coordinate the detail of trained EB-5 adjudicators as required.

In a specific case, field management may determine and recommend to the regional EB-5 POC that, due to the limited availability of EB-5 trained adjudicators in a particular area, the field office director should delegate his or her authority to another field office director to complete the interview and adjudication of the case.

Such delegation of authority must be clear and in writing. In such cases, the regional EB-5 POC is responsible for ensuring that a written delegation of authority from the field office director with jurisdiction is transmitted by fax, mail, or e-mail (with hard-copy of e-mail placed in the file) to the field office director under whose authority the interview and adjudication will be performed.

(g) Adjudication by a Field Office.

With respect to a properly filed Form I-829, a field office may approve the petition, issue

a request for further evidence, conduct an interview, or deny the petition if the petition is deniable because the eligibility requirements have not been met. A field office may also refer a Form I-829 back to the appropriate service center for processing if the case has not been previously reviewed by a trained and certified service center EB-5 adjudicator.

Note:

Field offices may not deny Form I-829s that are covered by Pub. L. 107-273. See note under Chapter 25.2(b).

(1) Procedures for a Form I-829 Not Referred According to Instructions. [Revised 06-17-2009]

Field offices that receive Form I-829 s transmitted in a manner that is NOT consistent with the procedures outlined herein should return those files to the Service Center, with the A-file, marked to the attention of the Service Center EB-5 POC and, in red, "Form I-829 return". The field office must update CIS accordingly.

All such Form I-829s shall be returned to the California Service Center.

Field offices receiving a **Form I-829** that does not contain the recommendation required under **AFM Chapter 25.2(e)(7)** should return the I-829 to the California Service Center. Upon receipt of a returned file, the California Service Center is instructed to prepare and transmit the file with the required recommendation directly to the field office while simultaneously notifying the regional office EB-5 POC of the file transfer in accordance with these instructions.

When a Form I-829 file is returned to the California Service Center, the field office must notify the conditional resident or representative pursuant to **Chapter 25.2(g)(1)**. The notice of file transfer should state that as necessary, the conditional resident may take the receipt notice to the nearest field office and receive evidence of status in accordance with the procedures set forth in paragraph **AFM Chapter 25.2(k)**.

(2) Initial Review.

Field offices may approve or deny the petition with or without an interview. A field office director, or his or her delegate, must initially review the petition in order to determine whether or not an interview will be conducted.

In adjudicating the petition, the field office may accept or reject the service center director's recommendation for interview and/or for suggested questions to ask the conditional resident during the interview to establish eligibility when the district director determines upon review of the record that the petition is approvable.

Pursuant to **8 CFR 216.6(b)(1)**, a field office may waive the interview on the Form I-829 and adjudicate the case. If the interview is waived, the petition must be annotated and MFAS updated in accordance with routine procedures. The field office director may also schedule the applicant for an interview, within 90 days of the date on which the petition was properly filed. **8 CFR 216.6(b)(2)**.

Instead of proceeding to approve or deny a case based on a determination that an interview is not essential to the adjudication and thus should be waived, a field office director may return a Form I-829 to a service center for adjudication if the initial review reveals that:

- ☐ ☐ ☐ The case was not reviewed by a trained and certified service center EB-5 adjudicator;
- ☐ ☐ ☐ An interview is not necessary; or
- ☐ ☐ ☐ The petition is deniable because the eligibility requirements for approving the petition have not been met.

All such returns must be made in coordination with the appropriate regional EB-5 POC. When a Form I-829 file is returned to the service center, the field office must manually send the petitioner, or the attorney or representative of record if the petitioner is represented, a notice of the file transfer.

(3) Interview.

If an interview is necessary to approve or deny the petition, the field office director will notify the conditional resident of the location and date of the scheduled interview.

The interviewing officer shall create a record of the interview, placing a memorandum in the file that responds to the issues raised in the service center director's referral memorandum as well as sets forth any new or additional information or issues arising from the interview.

The officer who conducts the interview shall render a final adjudication of the **Form I-829** and recommend a decision to the field office director. If a conditional resident fails to appear for an interview, the alien's permanent resident status shall be terminated automatically in accordance with the procedures outlined at **8 CFR 216.6(b)(3)**.

(4) Request for Evidence.

A field office may issue a request for initial evidence or additional evidence (RFE).

An RFE must be based on a determination that initial evidence, additional evidence or explanations are necessary to the adjudication of the petition. Any questions posed must be stated with specificity.

If the questions cannot be answered in writing, the petition must be referred for an interview. An RFE is not required if there is evidence of ineligibility in the record and the petition is clearly deniable. 8 CFR 103.2(b)(8).

If the conditional resident was issued an RFE for initial evidence by the field office and failed to respond to the request, the petition will be considered abandoned and denied in accordance with 8 CFR 103.2(b)(13). Under 8 CFR 103.2(b)(8), field offices should provide the conditional resident the specified period of time for response to an RFE.

(5) Derogatory Information.

In accordance with 8 CFR 216.6(c)(2), if the review of the petition, or the interview itself, reveals derogatory information concerning the requirements for removal of conditions, the field office shall provide the conditional resident with the opportunity to rebut such information. See paragraph (h) below.

(6) Approval.

A field office director may approve a Form I-829 if satisfied that the conditional resident has met all the requirements for the removal of the conditions as specified under section 216A of the Act and 8 CFR 216.6(c)(1), namely that:

(A) a commercial enterprise was established by the conditional resident;

(B) the conditional resident invested or was actively in the process of investing the requisite capital;

(C) the conditional resident sustained the establishment and investment activities throughout the relevant period of his or her residence in the United States (i.e., the conditional resident, 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); and

(D) the conditional resident created or can be expected to create within a reasonable period of time ten full-time jobs for qualifying employees. (**Note** : in the case of a "troubled business" as defined in **8 CFR 204.6(i)(4)(ii)** , the conditional resident must establish that he or she maintained the number of existing employees at no less than the pre-investment for the previous two years.)

In addition, pursuant to **section 216A(c)(3)** of the Act, the field office director must also determine that the facts and information contained in the petition are true.

(7) Action upon Approval .

If the petition is approved, the field office will remove the conditions on the conditional resident's status as of the second anniversary of the alien entrepreneur's admission as a conditional permanent resident.

If the conditional resident's biometrics have not already been collected at an ASC, the conditional resident must be notified to report for processing of a new permanent resident card.

The field office shall ensure that the file, including all relevant documents, is returned to the appropriate service center director. Normal procedures should be followed for entering the decision into MFAS and for card production.

(8) Denial .

A field office director may deny a petition if the initial review of the petition, the information obtained during the interview, or review of a response to a request for initial and/or additional evidence reveals that the requirements for removal of conditions, as prescribed under **section 216A** of the Act and the regulation at **8 CFR 216.6(c)(1)** , have not been met. The decision to deny a petition will be issued and signed by the appropriate district office director or his or her designee in accordance with standard field office practice.

(A) Grounds for Denial .

USCIS may deny a Form I-829 on the following grounds:

(i) Denial Due to Alien's Failure to Meet the Statutory and Regulatory Requirements as a Factual Matter.

USCIS lacks authority to grant a Form I-829 if the petition does not meet the statutory and regulatory requirements. If the field office director determines that the conditional resident has not established eligibility to have the conditions removed under the statute and regulations, the petition must be denied.

(ii) Denial due to fraud or other criminal grounds.

When it is determined that a petition may be deniable for fraud or other criminal grounds, the Form I-829 must first be referred to the FDNS POC in the field office in accordance with the Fraud Detection Standard Operating Procedures.

The processing site may also coordinate the referral of a Form I-829 to FINCEN with a request for appropriate research.

USCIS shall not make a final decision on the petition until a report of the results of the referral or investigation is obtained.

In most instances, if the decision to deny the petition is based on derogatory information considered by the field office director of which the petitioner is unaware, he or she shall be advised of this fact and offered an opportunity to rebut the information and present evidence in his or her own behalf prior to a final decision being rendered by USCIS. See 8 CFR 103.2(b)(16)(i).

(B) Action upon Denial.

The field office director shall provide written notice in accordance with 8 CFR 216.6(d)(2) if the petition is denied and shall follow established procedures for the issuance of an NTA to initiate removal proceedings. No appeal shall lie from this decision. The conditional resident may seek review of the decision to deny the petition in removal proceedings. In issuing this denial notice, the field office director shall:

(i) Advise the conditional resident of the specific reasons for the denial and that:

- ☐ the conditional resident's status, and that of his or her spouse or children, is terminated as of the date of the decision and, in the case of a conditional resident that is not represented;

- ☐ ☐ ☐ the conditional resident must surrender to the field office any permanent resident card, Form I-551, previously issued by legacy INS or USCIS; and

- ☐ ☐ ☐ there is no appeal from the decision, although the conditional resident may seek review of the decision in removal proceedings;

(ii) Follow established procedures for the issuance of an NTA to initiate removal proceedings;

(iii) Enter the denial information into MFAS.

(iv) Ensure that the A-file includes all relevant documents and is forwarded to the appropriate office.

(h) Derogatory Information.

If, in accordance with 8 CFR 216.6(c)(2), derogatory information is revealed during the adjudication of the Form I-829, USCIS shall provide the conditional resident with an opportunity to rebut such information through issuance of an RFE or a Notice of Intent to Deny (NOID).

The field office shall issue a Form I-72 Form Letter for Returning Deficient Applications/Petitions or the service center shall issue a Form I-797 notice, with a short explanation of the derogatory information, requesting that the conditional resident respond to the derogatory information and other issued identified in the RFE or NOID noting the date the response is due.

Derogatory information should be limited to information that the alien has not previously had an opportunity to address and the opportunity to rebut should not reopen the entire case. The opportunity to rebut shall also be provided if it is determined that the entrepreneur obtained his or her investment funds through other than legal means (such as through the sale of illegal drugs).

Depending on the response to a Form I-72, Form I-797 or NOID, a conditional resident may or may not be able to overcome the derogatory information.

Example 1 :

An interview may reveal that a conditional resident has created positions for only seven full-time employees.

If, in rebuttal, the conditional resident (CR) states that he or she intends to create three additional positions at an indefinite time in the future, the CR has not met the requirements of the regulations and the petition should be denied.

If, in rebuttal, the CR provides credible evidence that demonstrates recruitment for the three remaining full-time positions, that the positions are in the process of being posted and actively recruited, and that they clearly will be filled, approval may be considered.

Example 2 :

An interview may reveal that while a CR claims to have created positions for ten full-time employees, only nine are actually working.

The CR may present rebuttal information by demonstrating that he or she actively recruited the tenth employee, and the tenth employee is expected to be hired and begin employment.

USCIS may determine, after considering this information as well as all of the evidence supporting the petition as a whole, that such a petition is approvable.

If the conditional resident fails to overcome the derogatory information or evidence that the investment funds were obtained through other than legal means, USCIS may deny the petition in accordance with 8 CFR 216.6(d), terminate the conditional resident's status, and follow established procedures relating to the issuance of an NTA to initiate removal proceedings.

If derogatory information unrelated to any of the requirements for removal of conditions is identified during the course of an interview or review of the petition (for example, an arrest or criminal conviction or other egregious public safety issue), such information shall be referred to the Office of Fraud Detection and National Security (FDNS) in accordance with Fraud Detection Standard Operating Procedures for appropriate action.

Any action on the petition should be held until FDNS determines whether a referral for investigation should be made to Immigration and Border Enforcement (ICE) or no further action is required based on the information provided.

(i) Termination of Conditional Resident Status.

(1) Grounds for Termination.

USCIS may automatically terminate an alien's conditional resident status in the following instances:

(A) Failure to Timely File a Form I-829.

Generally, when a conditional resident fails to properly file a Form I-829 within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained lawful permanent residence, the alien's status will automatically terminate.

USCIS will issue a notice of termination and follow established procedures for the issuance of an NTA to initiate removal proceedings. There is no appeal from an automatic termination on this ground but the alien can seek review of the decision in removal proceedings. See 8 CFR 216.6(a)(5).

(B) Failure to Appear for Interview on a Form I-829.

Generally, if a conditional resident fails to appear for interview on a Form I-829, his or her conditional resident status will be automatically terminated as of the second anniversary of the date on which the alien obtained lawful permanent residence.

USCIS will issue a notice of termination and follow established procedures for the issuance of an NTA to initiate removal proceedings. The field office director may reschedule or waive the interview requirement if the alien establishes good cause for the failure to appear. See 8 CFR 216.6(b)(3).

(2) Action on Termination for Failure to Timely File.

Where it is determined that Form I-829 has not been timely filed, the appropriate service center or field office shall:

- (A) Issue a notice which states that the failure to file has resulted in the automatic termination of the alien's status;
- (B) Update the alien's MFAS file to reflect "Automatic Termination" and the notice of automatic termination shall be generated and mailed to the alien's last known address; and
- (C) **[Revised 06-17-2009]** Follow established procedures for the issuance of an NTA to initiate removal proceedings, ensure that the A-file includes all relevant documents and is forwarded to the appropriate office with jurisdiction over the alien's last known address.

The California Service Center shall generate weekly a printout from the MFAS to determine those conditional residents within its jurisdiction who have failed to file a timely Form I-829 to have the conditions on their status removed in accordance with

section 216A(c) of the Act and will take the actions described above in this section to terminate the status of such conditional residents and their dependents.

(j) Form I-829 Withdrawal Requests.

Pursuant to 8 CFR 103.2(b)(6), a petitioner may withdraw a Form I-829 at any time until a decision is issued by USCIS. However, a withdrawal may not be retracted.

The petitioner must request the withdrawal of the Form I-829 in writing. The written request may be executed by the petitioner and/or his or her attorney or representative of record.

The petitioner's conditional lawful permanent resident status and that of his or her spouse and any children shall be terminated as of the second anniversary of the date on which the alien obtained this status. In such cases, USCIS shall follow established procedures for the issuance of an NTA to initiate removal proceedings.

(k) Extension of Status for Conditional Residents with a Pending or Denied Form I-829.

Officers are advised that no extension of status can be given to an alien who has not timely filed a Form I-829, unless USCIS accepts a late petition based upon the alien's showing of good cause in accordance with 8 CFR 216.6(a)(5).

Upon receipt of a properly filed Form I-829, USCIS is authorized by 8 CFR 216.6(a)(1) to extend automatically a conditional resident's status, if necessary, until such time as USCIS has adjudicated the petition.

Therefore, if necessary, a field immigration information officer (IIO) in receipt of a request for documentation for travel or employment purposes from a petitioner who requires an extension of status based on a filed Form I-829 shall check the status of the petitioner in MFAS.

If the Form I-829 has been denied, the IIO should check DACS to determine if an NTA has been issued and follow established procedures for the issuance of an NTA to initiate removal proceedings.

If the Form I-829 is still pending or has been denied but no final order of removal has been entered, the IIO must collect the expired Permanent Resident Card and follow established procedures for providing a temporary extension of the alien's conditional resident status.

Documentation of conditional resident status must be issued until a final order of removal is issued. An order of removal is administratively final if a decision is not appealed or, if appealed, when the appeal is dismissed by the Board of Immigration Appeals.

Where the Form I-829 has been denied for failure to properly file a timely Form I-829 or for failure to appear for an interview, the alien's permanent resident status will be automatically terminated. Temporary evidence of permanent resident status as stated above should only be issued if the conditional resident's status is restored as described in 8 CFR 216.6(a)(5) and 8 CFR 216.6(b)(3).

(l) Lawful Permanent Residents Whose Conditions have been Removed.

Officers are reminded that, as stated in the field memorandum of June 26, 1998, absent a finding of fraud or other improper acts, USCIS will not initiate rescission 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.

(m) Adjudication of Form N-400, Applications for Naturalization when a Form I-829 Is Pending with the Service Center or Field Office.

(1) General.

The procedures for adjudicating a Form N-400 for a conditional resident (CR) who still has a Form I-829 pending at a service center or field office differ depending on whether the Form I-829 is subject to Pub. L. 107-273 or standard EB-5 procedures under Section 216A of the Act and 8 CFR 216.6.

Before taking any final action on a Form N-400, the naturalization adjudicator should confirm whether the case is subject to Pub. L. 107-273 by contacting the Chief Adjudications Officer, Foreign Trader, Investor, and Regional Center Program (FTIRCP), Headquarters for further instructions. The FTIRCP will coordinate any action with the relevant service center or regional office EB-5 POC.

(2) Public Law Cases.

Form I-829s filed by conditional residents are subject to Pub. 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 was denied before November 2, 2002, the Form I-829 falls under the Pub. L. provisions if a motion to reopen was filed before January 2, 2003.

Section 11033 of Pub. L. 107-273 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.

(3) Identifying EB-5 Cases Prior to Adjudication of the Form N-400.

Generally, EB-5 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.

If a CR has a status in the "N" series, the service center or field office adjudicator 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 Immigration Judge 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-829s Subject to Public Law 107-273.

The E51- E58 classification codes are given only once the conditions are removed.

If an adjudicator 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 adjudicator 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 in updating CIS. This issue must be resolved before moving forward on the adjudication of the N-400.

(4) Eligibility to File for Naturalization While a Form I-829 is Pending.

A conditional resident who has timely filed a Form I-829 may submit a Form N-400 prior to the adjudication of the Form I-829. Section 216A(e) of the Act and the regulations at 8 CFR 216.1 allow a conditional resident to apply for naturalization and the conditional resident may file a Form N-400 whether or not the Form I-829 filed by the CR has been adjudicated.

(5) Scheduling of the Naturalization Interviews for EB-5 Cases.

(A) Non-Public Law Cases.

Field offices or service centers may schedule for interview Form N-400s for non-Public Law cases as provided in subparagraph 6(ii)(C) below.

(B) Public Law Cases.

Except as provided in subparagraph 6(A) below, field offices or service centers will not schedule for interview any Public Law cases where a Form N-400 has been filed and the Form I-829 is still pending.

If a case has already been scheduled for interview, but the applicant has not yet appeared, the field office or service center with the Form N-400 should de-schedule the interview.

The California Service Center (CSC) also will de-schedule in Claims 4 the examination of any naturalization applicant who has not had his or her conditional resident status removed and whose Form I-829 is subject to Pub. L. 107-273.

Field offices or other service centers should forward any such Form N-400s to the California Service Center to the EB-5 POC for consolidation with the A-file containing the Form I-829. USCIS will not permit a Pub. L. 107-273 case with a pending Form N-400 to proceed to initial interview (even after all required background checks have been completed) until the conditions have been removed.

(6) Adjudicating the Form N-400 if the Form I-829 is Pending.

For Form N-400s that are pending adjudication prior to the effective date of this memorandum, service centers and field offices should ascertain the current status of the Form I-829 prior to proceeding with a final adjudication of the N-400.

NOTE:

An 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 lawful permanent resident status (LPR) through another avenue or is eligible to naturalize based on military service under section 329 of the Act.

(A) N-400 filed with a pending I-829 where the applicant has since obtained LPR status on other grounds (applies to all EB-5 cases, including Pub. L. 107-273 cases).

An alien who is already a CR cannot seek to obtain LPR status, based on other grounds, through filing of an application for adjustment of status while in the United States. Section 245(d) of the Act; 8 CFR 245.1(c)(5).

However, if the alien's CR status is properly terminated prior to filing of a subsequent application for adjustment of status, USCIS may, in its discretion, adjust the alien to LPR status again, if the alien remains admissible, has an immigrant visa immediately available, and favorable exercise of discretion to adjust is warranted. If the alien's CR status has not been terminated or rescinded, the alien may only obtain LPR status again via consular processing and admission to the United States on a new immigrant visa.

A CR is eligible for naturalization and may be interviewed, notwithstanding a currently pending I-829, if he or she visa processed abroad and reentered on a new immigrant visa, or subsequently adjusted status on other grounds (e.g., marriage to a U.S. citizen) after termination of the original CR status. The naturalization adjudicator should refer the pending Form I-829 to their supervisor for further instructions on how to close out the original Form I-829 and document that the CR status on which it was based was either terminated, rescinded, or superseded by a subsequent admission on an immigrant visa.

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

- Public Law Cases Where Form N-400 Interview has Already Occurred. If prior to the effective date of this AFM update (12-21-2006), an applicant has appeared for examination on his or her Form N-400 but is still a CR, the field adjudicator must ensure that the Form I-829 is adjudicated prior to a final decision on the Form N-400.

If the Form I-829 cannot be approved and, because the **Form I-829** is subject to Pub. L. 107-273, also cannot be denied, the Form N-400 may still be denied under Section 318 of the Act (along with any other applicable ground that may be the basis for a finding of ineligibility for naturalization), when review of the A-file by a fully trained EB-5 adjudicator reveals that the applicant did not properly obtain EB-5 status or that the Form I-829 would not be approvable due to the applicant's failure to comply with the EB-5 requirements.

A report of the analyses and findings made by the EB-5 service center adjudicator who reviewed the entire case file will be forwarded to the field office adjudicator to support the Form N-400 denial.

- Sample Denial Language for Applications Subject to Pub. L. 107-273. When the field adjudicator determines that the Form N-400 must be denied, the field adjudicator

may use the following language to address the issue of ineligibility under section 318 of the Act.

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 (INA). See INA § 318. The term "lawfully admitted for permanent residence" is defined as "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." INA § 101(a)(20).

A person may only be naturalized if he or she was granted resident status in accordance with the immigration laws, and not if status was obtained by mistake, fraud, or otherwise not in compliance with the law. *Matter of Koloamatangi*, 23 I & N Dec 548, 550 (2003) (holding that "the term 'lawfully admitted for permanent residence' did not apply to aliens who had obtained their permanent residence by fraud, or had otherwise not been entitled to it"); see also, *Arellano-Garcia v. Gonzales*, 429 F.3d 1183 (8th Cir. 2005) (holding that an alien who received permanent residency status by a mistake could not be considered an alien "lawfully admitted for permanent residence"); *Lai Haw Wong v. INS*, 474 F.2d 739 (9th Cir. 1973) (same).

You were accorded conditional resident status pursuant to the Employment Creation immigrant visa category under INA § 203(b)(5). To qualify under this immigrant visa category, an alien must invest \$1,000,000 (or \$500,000 in certain targeted areas) of lawfully obtained capital such as cash, inventory or other tangible property. In addition, the alien's investment must create at least ten full-time jobs for United States citizens, lawful permanent residents, or other immigrants lawfully authorized to be employed in the United States. A review of your file reflects that you did not make the required investment and/or create the required number of full-time jobs. Thus, your admission to the United States was not in accordance with all applicable provisions of the INA and you are therefore ineligible for naturalization.

The language suggested above should be modified to address the specific circumstances in each case (for example, to account for N-400 applicants who were EB-5 derivatives).

(C) Applications not subject to Pub. L. 107-273.

The field adjudicator may conduct the naturalization examination, but must immediately contact the service center with jurisdiction over the Form I-829 before taking any final action.

Only officers fully trained and certified in EB-5 law, procedures, and the relevant precedent decisions may adjudicate Form I-829s. As a result, the field adjudicator

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 POC to obtain adjudication of the Form I-829 before proceeding with a determination on the Form N-400.

Once the Form I-829 is adjudicated, including the appropriate update in MFAS, the field adjudicator 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 based on Section 318 of the Act because the applicant no longer has the required lawful permanent resident status.

Because **8 CFR 336.1(a)** requires that " the Service shall serve a written notice of denial upon an applicant for naturalization no later than 120 days after the date of the applicant's first examination on the application...", it is imperative that the service center or field office with jurisdiction over the Form I-829 adjudicate it expeditiously so that if the Form I-829 is denied, denial of the Form N-400 can occur within the 120-day timeframe.

\afm \ Adjudicator's Field Manual - Redacted Public Version \ Chapter 25 Petitions for Removal of Conditions on Conditional Residence. \ 25.2 Entrepreneurs
[Previous Document](#) [Next Document](#)



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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.



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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.**



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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;



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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...;



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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;



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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



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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.



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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.

If a Regional Center has been approved and designated then USCIS has accepted its economic analysis and job creation multipliers for identified target industries, per the business plan, within its geographic area.



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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.



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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/



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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.



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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](http://www.implan.com/library/documents/implan_io_system_description.pdf)



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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.



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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.



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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.



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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.



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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.



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REMI Model Linkages (Excluding Economic Geography Linkages)

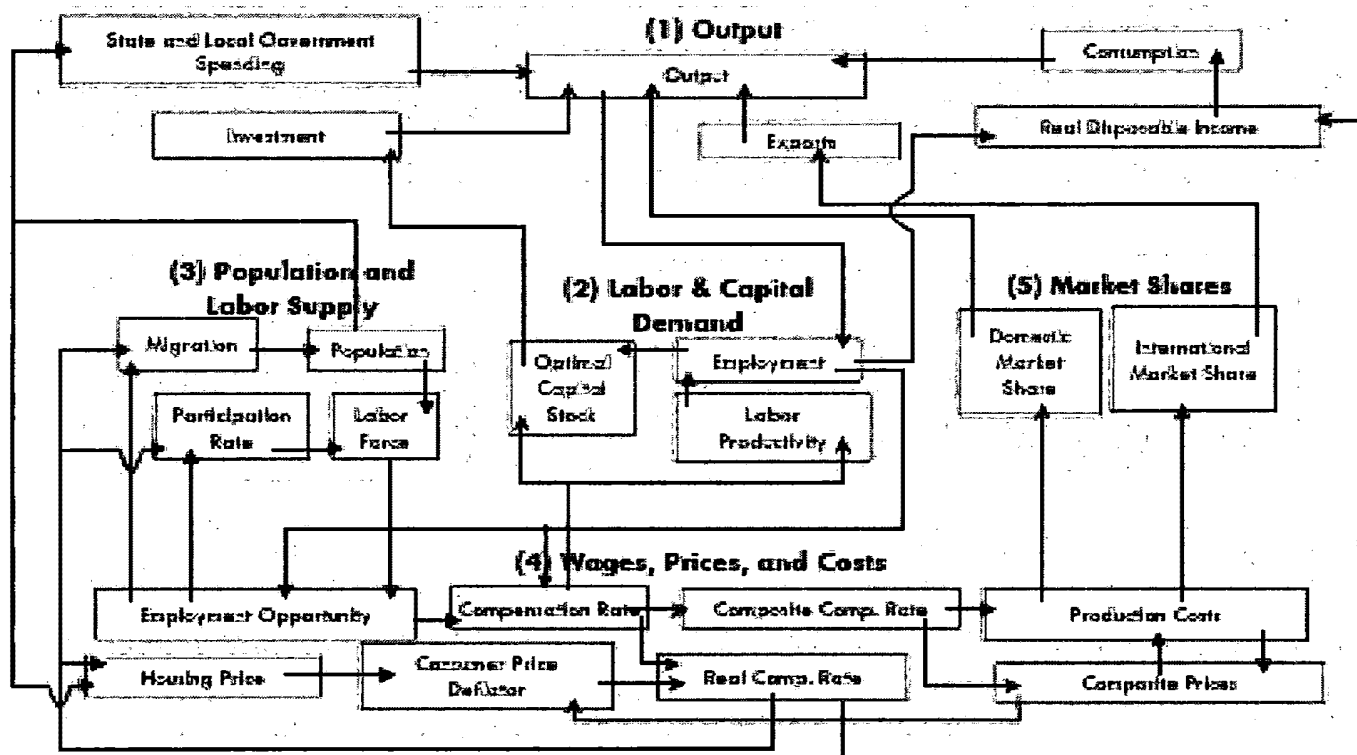


Figure 1: REM Model Linkages



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Economic Geography Linkages

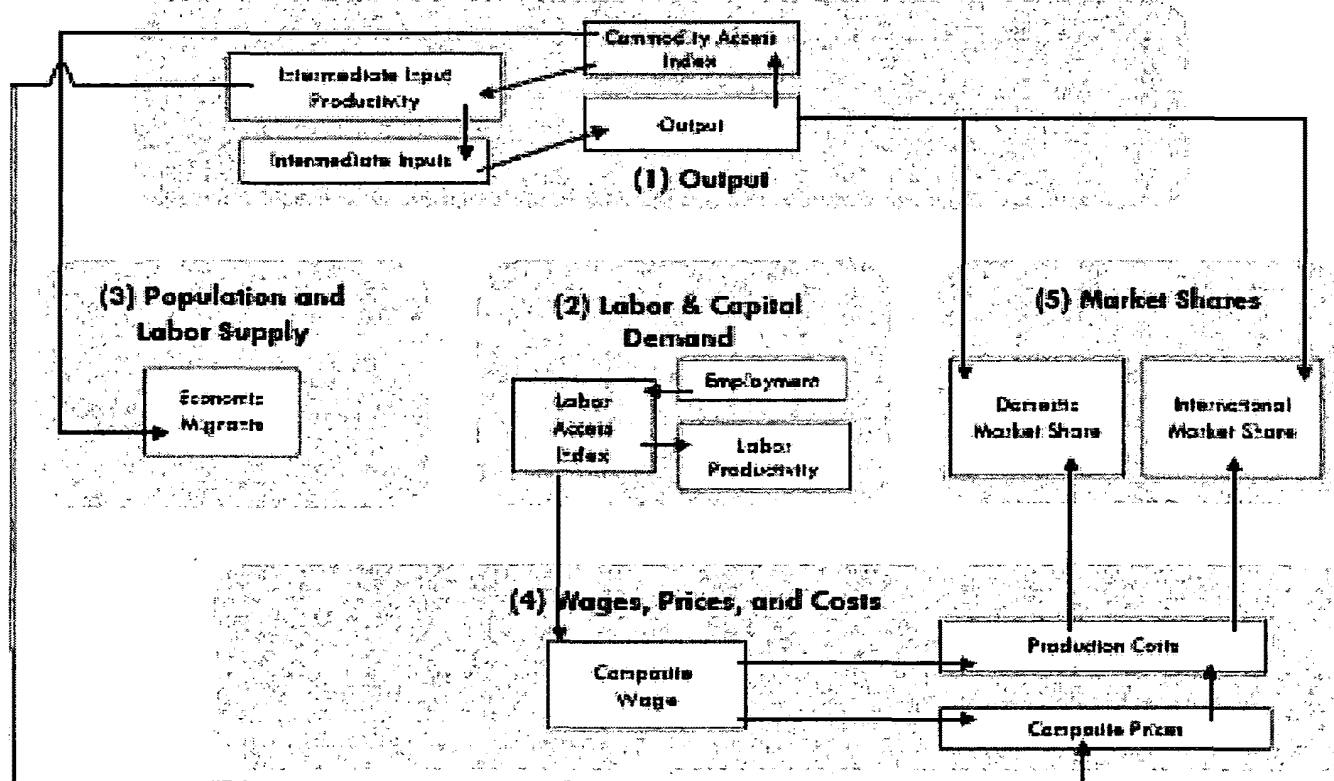


Figure 2: Economic Geography Linkages



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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.



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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>**



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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.



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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.



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Multipliers

Leontief inverse matrix (& coefficients):

As applied to *regional* interindustry or input-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.



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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.



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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"



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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]



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