



U.S. Department of Justice  
Immigration and Naturalization Service

**B7**

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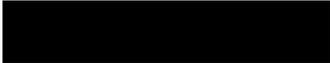


File: WAC-98-244-50458

Office: California Service Center

Date: **OCT 11 2000**

IN RE: Petitioner:



Petition: Immigrant Petition by Alien Entrepreneur Pursuant to § 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(5), and § 610 of the Appropriations Act of 1993.

IN BEHALF OF PETITIONER:



**Public Copy**

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prevent clearly unwarranted  
invasion of personal privacy

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, California Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be affirmed.

The petitioner seeks classification as an alien entrepreneur pursuant to § 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(5), and § 610 of the Appropriations Act of 1993. The director denied the petition determining that the petitioner had failed to establish eligibility on numerous grounds. The director found that the petitioner failed to establish that the new commercial enterprise would be primarily doing business in a targeted employment area eligible for the reduced capital investment, failed to demonstrate that the proposed investment would result in the requisite employment creation, failed to establish that he had made, or was in the process of making, a qualifying at-risk investment of the requisite amount of capital, and failed to adequately establish that the funds identified in the petition were in fact his funds. The director also expressed concern that changes to the instant petition, stemming from its refiling from an earlier proceeding, constituted an impermissible amendment and failed to show that the petitioner established eligibility at time of filing. The director afforded the petitioner thirty days in which to submit a brief in response to the decision.

On certification, counsel for the petitioner submitted a brief arguing, in pertinent part, that the decision was procedurally improper because the center director failed to issue a request for additional evidence prior to denying the petition. Counsel further argued that the decision was erroneous and that the record established that the petitioner was eligible for the benefit sought. Additional documentation in support of the petition was submitted.

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

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

employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

The petitioner is a native of Czechoslovakia and a citizen of Canada currently residing temporarily in the United States for business purposes in TN-1 nonimmigrant classification. The petitioner filed Form I-526 indicating that the petition is based on an investment in a new business in a targeted employment area eligible for downward adjustment of the minimum capital investment to \$500,000 and indicating that the new enterprise will be doing business in a designated "regional center" eligible for participation in the Immigrant Investor Pilot Program.

#### CERTIFIED DECISION

The petition was filed on September 14, 1998. The director denied the petition on November 25, 1998, and certified the decision for review by the Associate Commissioner for Examinations pursuant to the provisions of 8 C.F.R. 103.4. In the Notice of Certification ("NOC"), the director advised the petitioner of his right to submit a brief to the reviewing authority within thirty days. Counsel for the petitioner was subsequently granted an extension of the thirty-day period by the Director, Administrative Appeals Office ("AAO"), on behalf of the Associate Commissioner.

In the brief that followed, counsel argued, in part, that the NOC was issued in violation of 8 C.F.R. 103.2(b)(8) which required the center director to issue a request for additional evidence prior to denying the petition.

8 C.F.R. 103.2(b)(8) provides, in pertinent part, that:

If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence....Except as otherwise provided for in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence.

The argument is not persuasive. First, the director did not deny the petition due to missing required initial evidence. The director found that, based on the required initial evidence submitted by the petitioner, he was ineligible for the benefit sought. The director may request further evidence if eligibility is unclear, but is not compelled to do so. Second, 8 C.F.R. 103.2(b)(8) contains the stipulation "except as otherwise provided

in this chapter." The director issued the NOC based on her authority to issue and certify a decision under 8 C.F.R. 103.4. That regulation which governs certifications is provided for in the same chapter. It does not require a request for evidence ("RFE") prior to issuing a decision, but does require affording the petitioner an opportunity to respond to the NOC. The director adhered to this procedure.

Furthermore, counsel's assertion that the Service violated 8 C.F.R. 103.2(b)(8) in failing to allow the petitioner to provide additional evidence is a misreading of that regulation. 8 C.F.R. 103.2(b)(8) states that the director shall request further evidence only if initial evidence is entirely missing; the director may request further evidence if eligibility is unclear. 8 C.F.R. 103.2(b)(8) also provides, however, that if the record contains evidence of ineligibility, the petition shall be denied notwithstanding any lack of required initial evidence. The director determined that the record contained evidence of ineligibility on numerous grounds, such as a deficient business plan that did not support the petitioner's claims. Counsel argued that he was denied the opportunity to supplement the petitioner's business plan. Nevertheless, the record contained a business plan. No written request is required for deficient initial evidence.

Based on the above, it is concluded that the center director's decision was properly issued and that the petitioner has had the requisite opportunity to supplement the record. The petition was denied and certified based on a finding of ineligibility, not on the basis of missing initial evidence as argued by counsel.

#### REGIONAL CENTER DESIGNATION AND TARGETED EMPLOYMENT AREA

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

*Regional center means an economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.*

8 C.F.R. 204.6(m)(7) states, in pertinent part:

*An alien seeking an immigrant visa as an alien entrepreneur under the Immigrant Investor Pilot Program must demonstrate that his or her qualifying investment is within a regional center approved pursuant to paragraph (m)(4) of this section and that such investment will create jobs indirectly through revenues generated from increased exports resulting from the new commercial enterprise.*

(i) *Exports.* For purposes of this paragraph (m) of this section, the term "exports" means services or goods which are produced directly or indirectly through revenues generated from a new commercial enterprise and which are transported out of the United States;

The petitioner submitted a copy of a letter dated January 18, 1994, from the Service's Acting Assistant Commissioner for Adjudications designating the Mayor's Economic Development Department, City of New Orleans, as a regional center. The letter explained that alien entrepreneurs who file petitions for enterprises located within the City of New Orleans must satisfy all requirements of 8 C.F.R. 204.6, except that employment creation may be demonstrated by indirect employment creation through increased export activity. Therefore, the petitioner demonstrated that the City of New Orleans qualifies as a designated regional center.

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

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

8 C.F.R. 204.6(j)(6) states that:

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

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

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

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

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

The state government of any state of the United States may designate a particular geographic or political subdivision...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 Associate Commissioner for Examinations of the...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.

The petitioner also submitted a copy of a letter dated April 14, 1998, from the State of Louisiana, Department of Economic Development, Business Incentives Division stating, in part, that Census Tract 58, Block Group 2, within the City of New Orleans, had been designated the Orleans Parish Enterprise Zone (the "Enterprise Zone") and an area of high unemployment. It was stated that the designation was based on a 55.14 percent rate of unemployment within the zone, based on 1990 U.S. census data. The petitioner also submitted, in pertinent part, an internet printout from the Department of Labor's Bureau of Labor Statistics indicating that the national average unemployment rate in August 1998 was calculated as 4.5 percent; a table prepared by the petitioner stating the unemployment rate for the New Orleans Enterprise Zone was 19.0 percent in June 1998, and a second table prepared by the petitioner stating the estimated unemployment rate for the New Orleans Enterprise Zone was 27.84 percent in June 1998. The petitioner annotated the tables stating that the data were compiled from U.S. government internet websites.

The director rejected the letter from the State of Louisiana finding that the petitioner failed to identify the state agency authorized to designate high unemployment areas, that the 1990 census data were too far removed from the date of filing, and that there was no evidence that the designation as a high unemployment area was based on 150 percent of the national average as of the time of filing. The director also rejected the petitioner's own statistical computations of the current unemployment rate of the Enterprise Zone as unverifiable and not stemming from an official source. The director therefore concluded that the petitioner failed to establish that the Orleans Parish Enterprise Zone qualified as a targeted employment area and that the minimum capital investment for the petition therefore was \$1,000,000.

On certification, counsel asserted that the letter from the State of Louisiana should be afforded sufficient weight to demonstrate a targeted employment area arguing:

Therefore, in view of the fact that the New Orleans Enterprise Zone was properly designated pursuant to Louisiana state law, the letter obtained from the DED certifying that Census Tract 58, Block Group 2 is a Targeted Employment Area, complies with 8 C.F.R. 204.6(i) & (j)(6).

Counsel also argued that the new commercial enterprise attempted to obtain more current unemployment data for the Enterprise Zone from the Louisiana Department of Labor, but were advised that monthly unemployment statistics are only available at the parish (county) level, not for smaller areas such as the Enterprise Zone. Counsel then argued that the monthly data prepared by the petitioner were taken from official government websites and should be accepted. Counsel contended that it was unreasonable to reject the statistics because they were obtained through the electronic media.

8 C.F.R. 204.6(j)(6)(ii) provides for two methods to establish that a specific political or geographic area is a high unemployment area, defined as an area with 150 percent of the national average unemployment rate, and therefore qualifies as a targeted employment area eligible for the reduced capital investment. 8 C.F.R. 204.6(j)(6)(ii)(A) provides for the submission of statistical data in the case of metropolitan statistical areas ("MSA"), specific counties within an MSA, or counties in which a city or town with a population of 20,000 or more is located. In the case of a geographic or political subdivision of a county or of an MSA, 8 C.F.R. 204.6(j)(6)(ii)(B) provides for the submission of a letter from an authorized body of the government of the state designating the area as a high unemployment area, providing that the letter meets the requirements of 8 C.F.R. 204.6(i).

In this case, the Orleans Parish Enterprise Zone is a subdivision of Orleans Parish and presumably of the New Orleans MSA. Therefore, the independent computation of statistical data is not required and is not an acceptable means to demonstrate a high unemployment area.

For a political or geographic subdivision of a county or of an MSA, the petitioner must submit a letter from an official of an authorized state body conforming to 8 C.F.R. 204.6(i). As noted by the director, 8 C.F.R. 204.6(i) requires that the State notify the Service's Associate Commissioner for Examinations of the state agency delegated to certify high unemployment areas. The regulation requires that the notice from the State agency include a description of the boundaries of the geographic or political subdivision, that it demonstrate that the area has an unemployment

rate of at least 150 percent of the national average rate, and that it show the method by which the unemployment statistics were obtained.

Counsel did not address the center director's finding regarding the petitioner's failure to identify the designated Louisiana agency registered with the Service to designate high unemployment areas. Nevertheless, Service records available through the Service's Office of Adjudications reflect that the Louisiana Department of Economic Development is the authorized body registered with the Service to designate high unemployment areas. Therefore, the Enterprise Zone defined as Census Tract 58, Block Group 2 may be considered a targeted employment area eligible for the reduced capital investment. However, the petitioner did not provide a complete description of the subdivision referred to as Census Tract 58, Block Group 2, such as its area and boundaries. Therefore, the Service has no independent means to evaluate whether a given business is primarily doing business in that area.

#### EMPLOYMENT CREATION

8 C.F.R. 204.6(j)(4)(i) states:

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

(A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or

(B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

8 C.F.R. 204.6(j)(4)(iii) states, in pertinent part, that:

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.

8 C.F.R. 204.6(m)(7) states:

An alien seeking an immigrant visa as an alien entrepreneur under the Immigrant Investor Pilot Program must demonstrate that his or her qualifying investment is within a regional center approved pursuant to paragraph (m)(4) of this section and that such investment will create jobs indirectly through revenues generated from increased exports resulting from the new commercial enterprise.

(i) *Exports.* For purposes of paragraph (m) of this section, the term "exports" means services or goods which are produced directly or indirectly through revenues generated from a new commercial enterprise and which are transported out of the United States.

(ii) *Indirect job creation.* To show that 10 or more jobs are actually created indirectly by the business, reasonable methodologies may be used. Such methodologies may include multiplier tables, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and other economically or statistically valid forecasting devices which indicate the likelihood that the business will result in increased employment.

The petition is based on the petitioner's establishment of and investment in a new commercial enterprise, United States Export Trade V Limited Partnership ("USET") or (the "Partnership"). USET was described as a new enterprise whose business would be providing "financial services" to export companies located in New Orleans, Louisiana and eventually to other designated regional centers and targeted employment areas. USET's financial services were described as providing "pre-export working capital loans" or "receivables financing" to export companies.

USET filed its Certificate of Limited Partnership with the Maryland Department of Assessments and Taxation on August 25, 1998. The principal place of business of USET is Greenbelt, Maryland. The General Partner of USET is United States Export Services, Inc. ("USES") or (the "General Partner"), a Maryland corporation established on July 10, 1997. There is also a Special Limited Partner, [REDACTED] Inc. [REDACTED], a Maryland corporation established on February 8, 1998. The petitioner stated that he is the only foreign national limited partner in the Partnership. Ownership interest of USET was stated as follows: the petitioner 95 percent; USES 1 percent; and Amtrade 4 percent.

In a memorandum accompanying the petition, the petitioner outlined the business plan for USET. He would capitalize USET at \$525,000,

with \$25,000 reserved for initial expenses of the Partnership. USET would contract with Amtrade to manage its financial services operation. Amtrade would in turn make the loans to export companies operating in the New Orleans regional center and the Enterprise Zone within the city.

On September 2, 1998, USET filed a registration as a foreign partnership with the State of Louisiana naming its principal place of business in the state as 201 St. Charles Avenue, Suite 2573, New Orleans. The petitioner also submitted the above referenced letter dated April 14, 1998, from the State of Louisiana, Department of Economic Development, Business Incentives Division that also stated that 201 St. Charles Avenue is within Census Tract 58, Block Group 2 in the City of New Orleans. The petitioner also submitted a letter dated April 15, 1998, from the Office of the Mayor, Division of Economic Development stating that 201 St. Charles Avenue is within the regional center designated by the INS.

In the NOC, the director exhaustively reviewed the documentation submitted and that discussion need not be repeated here. The director first found that the petitioner had not demonstrated a reasonable methodology that establishes the nexus between the petitioner's investment and the indirect creation of at least ten jobs. The director noted that the petitioner had not identified any specific export companies to whom it would loan money, had not shown that export sales would increase proportionately to money loaned to the unspecified businesses, and had not shown that its calculation equating each dollar loaned to a U.S. exporter with a dollar of increased export was a reasonable methodology. The plan concluded that the petitioner's investment of \$500,000 would result in the indirect creation of 15 new jobs. The director concluded that the petitioner's business plan was insufficiently detailed to show that the requisite employment creation would occur and that the method of calculating job creation had not been shown to be a "reasonable methodology" as required by 8 C.F.R. 204.6(j)(m)(7)(ii).

The director analyzed the petitioner's business plan and supporting documentation in finding it insufficient to support the claim of indirect employment creation. The director noted that section 1.02 of the Agreement of Limited Partnership of USET provided that it may engage in business activity in New Orleans or anywhere else in the United States regardless of targeted employment area designation or of regional center designation. The director then noted that the petitioner had not identified any specific export company in New Orleans with which USET, through [REDACTED] would be doing business. The director also noted that, in order to demonstrate the requisite employment creation, the petitioner relied on what was termed in the business plan "an established government multiplier" of roughly 15,000 new jobs created from each

\$1 billion in increased exports and found that the equation was not substantiated as an established government or economic methodology.

On certification, counsel first explained that United States Export Trade V Limited Partnership is the first of "several USET Partnerships that will be created to provide export trade services to companies in New Orleans." Therefore, "The business plan was intended to explain the commercial operations of all of the USET partnerships...." Counsel argued that the business plan is that of the petitioner and was sufficiently detailed to establish the requisite job creation. Counsel then submitted documentation to show that the Partnership had initiated contact with two New Orleans export companies: Wing Trading, Inc. ("WTI") and IPS of Louisiana Corporation ("IPS"). Counsel also provided a copy of a certificate whereby USET registered as a foreign partnership in the State of Louisiana.

Counsel stated that USET will provide "pre-export working capital loans to the two target companies" and that such financing arrangements can "turn" three to five times per year. Counsel then asserted that conservatively the petitioner's \$500,000 investment will result in \$1,000,000 in increased exports over the two-year period.<sup>1</sup> Counsel then argued that the previously relied-on job creation formula was based on the INFORUM model found in a report submitted into evidence, U.S. Jobs Supported by Goods and Services Exports, 1983-1994, U.S. Department of Commerce Economics and Statistics Administration (November 1996) (the "DOC report") and supports its contention that at least 15 U.S. jobs would be directly or indirectly created by the petitioner's investment.

#### Reduced Capital Investment

To qualify for the reduced capital investment, a petitioner must demonstrate that the new commercial enterprise is or will be principally doing business in a targeted employment area. 8 C.F.R. 204.6(j)(6)(ii)(A). In the case of a new commercial enterprise that is engaged, directly or indirectly, in lending money to businesses that are ultimately responsible for the requisite job creation, those businesses must be located in the targeted employment area. Matter of Izumii, Int. Dec. 3360 (Assoc. Comm., Ex., July 13, 1998).

In this case, the petitioner submitted evidence that USET declared an address in Census Tract 58 Block Group 2 in registering with the State of Louisiana. The business plan reflects, however, that USET

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<sup>1</sup> Based on the petitioner's calculations of its loans "turning" three to five times per year, the \$500,000 investment could result in exports of \$1.5 to \$2.5 million per year or \$3 to \$5 million over the two-year period of conditional residence.

is simply a holding company and that [REDACTED] will actually operate the lending operation. There is no documentation showing that [REDACTED] will also be located at the Charles Avenue address. Nevertheless, the location of the lending entity is not dispositive. It is the location of the entities responsible for the ultimate job creation that determines eligibility, in this case, the export companies receiving the USET sponsored loans.

On certification, counsel for the petitioner identified two potential client export companies said to be located in the targeted employment area. To support this claim counsel submitted letters from the two companies. In a letter from its president and sole shareholder dated December 15, 1998, WTI was described as a new start-up company with "pending contracts" for the sale of manufactured goods to companies in Mexico. In two letters from its representative, IPS was described as a company established in 1986 that is focused on exporting industrial goods<sup>2</sup> to companies in Mexico and central America. Both representatives stated their interest in receiving \$500,000 in loans from USET.

Regarding the first company, WTI, the petitioner submitted documentation indicating that it is wholly owned by a single individual and is a new company that has not yet commenced business activity. In a letter dated December 18, 1998, the president of the company claimed a business address at 203 Carondelet Street and stated that the address is within the Orleans Parish Enterprise Zone. As noted above, the petitioner did not submit documentation of the area and boundaries of the designated Enterprise Zone and the Service has no means to verify that 203 Carondelet Street is, in fact, within the zone. Moreover, the president of the company did not state whether WTI has or will have physical facilities such as warehouses and transportation depots located in the Enterprise Zone. Merely stating the location of the business office of an export company alone is not sufficient to allow the Service to determine that the proposed investment would have an economic impact within a targeted employment area.

Regarding the second company, IPS, the petitioner submitted a letter dated December 31, 1998, from a company representative showing that its offices are located in Kenner, Louisiana, but that its warehouse facilities are located at 4401 N. Preiur Street within the enterprise zone. Again, the Service has no means to verify this claim. Nor is there any information on the size of the

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<sup>2</sup> Both letters are signed by [REDACTED] without identifying his title within IPS. The first letter dated December 31, 1998, states that IPS specializes in exporting industrial equipment. The second letter dated January 22, 1999, states that IPS is focused on the agricultural sector. The apparent discrepancy was not explained.

warehouse facility or the volume of goods that are transported via that facility.

In addition, as noted by the director, where the new commercial enterprise has not yet commenced business activity the Service must place substantial reliance on its business plan. The business plan in this matter does not identify the area of the targeted employment area within the City of New Orleans, does not identify the number and size of the export companies operating in that area, and does not include a market analysis demonstrating that such export companies would seek short-term loans from USET rather than from institutional lenders. The petitioner indicated that USET would also pursue investments in other qualifying targeted employment areas in the United States, but submitted no evidence of any concrete action toward this end. Expressions of a mere intent to invest are not sufficient. See 8 C.F.R. 204.6(j)(2). Based on the documentation furnished, it cannot be concluded that the petitioner has met its burden of establishing that it is or will be principally doing business in a single targeted employment area or in multiple targeted employment areas. Therefore, the petitioner failed to establish eligibility for the reduced capital investment and the minimum investment amount in this matter is \$1,000,000.

#### Indirect Employment Creation

In order to qualify for exemption from the requirement of direct employment creation, 8 C.F.R. 204.6(j)(4)(iii) requires that the petitioner show that his investment will create, directly or indirectly, not fewer than ten full-time positions by a reasonable methodology. 8 C.F.R. 204.6(m)(3) requires, in part, that a petitioner (i) clearly describe how the regional center will focus on a geographical region of the United States and promote improved regional productivity, (ii) provide in verifiable detail how jobs will be created indirectly through increased exports, and (v) be supported by economically or statistically valid forecasting tools. In the Immigrant Investor Pilot Program, the job creating businesses must be within the geographical limits of the regional center. Matter of Izumii, supra.

Again, the Service must rely on the petitioner's business plan and its supporting documentation. As noted by the director, the business plan contained in the record is that of United States Export Trade Limited Partnership, rather than United States Export Trade V Limited Partnership. The plan also stated that the Partnership would be providing capital to USES II LLC, a Delaware entity, in proving loans to export companies, rather than Amtrade Inc., a Maryland corporation. Counsel explained on certification that the instant petition for immigrant investor classification is based on an entrepreneurial enterprise revised from a previous petition that was withdrawn by the petitioner. It is apparent that the business plan submitted in support of the instant petition was

not revised to reflect the new entrepreneurial enterprise on which the instant petition is based.

The additional documentation submitted on certification is insufficient to overcome the director's objections. First, the petitioner has not clearly described how the petitioner's investment will focus on improved regional productivity in the New Orleans regional center. USET and the two export companies identified as potential clients are located in New Orleans. However, as noted above, the petitioner did not provide a detailed market analysis establishing that those two companies, or any other export companies in New Orleans, would reasonably seek loans from USET rather than established institutional lenders. Moreover, while two or more export companies may be located within New Orleans, the petitioner did not submit any documentation of the benefits to regional productivity. While an export company may be headquartered in a given city, its suppliers, warehouse facilities, and transportation facilities may be located anywhere in the United States with no significant economic impact on the city hosting the exporter's headquarters. In the absence of any analysis of USET's impact on the regional productivity of the New Orleans regional center, the Service is unable to determine that the requisite economic benefits would occur.

Second, the circulation of money in an economy is a generally accepted economic principle. However, counsel for the petitioner has not provided in verifiable detail how the \$500,000 in initial capital would result in increased exports with a value of \$1 million, \$3 million, or \$5 million, as claimed, and how a given number of jobs will be created through that increase. Based on the petitioner's calculation of 15,000 jobs for each \$1 billion in capital investment, and on a one-to-one relationship between dollars invested and dollar value of exports, the investment of \$500,000 would result in only 7.5 jobs. Counsel contended that USET will sponsor short-term loans that will "turn" three to five times per year. It was argued that the \$500,000 in initial capital would promote from \$1 million to \$5 million in increased exports thereby supporting at least 15 new jobs. To support this argument the petitioner submitted a letter dated January 21, 1998, from [REDACTED] President, Export Services, Inc., Columbia, Maryland that stated he was the author of the petitioner's business plan and offered his opinion that the \$500,000 in capital would be responsible for at least \$1.2 million in increased exports.

The evidence on certification is not persuasive. 8 C.F.R. 204.6(m)(7)(ii) states that a petitioner may demonstrate indirect employment by "reasonable methodologies" that include multiplier tables, feasibility studies, market analyses or other economically or statistically valid forecasting devices. The letter from [REDACTED] does not satisfy this burden. He is affiliated with the petitioner's business and is the author of the business plan that

he is evaluating. The regulations do not specify given forms of documentation that must be submitted to satisfy this burden, they only require that the documentation establish a "reasonable methodology." It must be concluded that a written opinion prepared by a party affiliated with the new commercial enterprise does not constitute adequate evidence that an unsubstantiated equation qualifies as a "reasonable methodology" demonstrating the requisite employment creation.

New Orleans received regional center designation from this Service and the State of Louisiana has agencies addressing economic development. Documentation from a state, county, city or other governmental agency concerned with job creation from investment in exports would certainly be considered an example of reasonable documentation. The Service recognizes that export financing is a specialized field in business, but also recognizes that there is no shortage of economic documentation prepared by objective parties.

Furthermore, the Commerce Department report contains extensive data on jobs stemming from exports, but the petitioner's espoused job-creation formula of 15,000 jobs for each \$1 billion in investment is not evident anywhere in the report and counsel did not provide an accurate citation of its source or method of calculation. The DOC report at page 14 does state, "The number of jobs supported by goods exports in individual industries varied widely..." The petitioner has identified two companies involved in the export of a range of manufactured goods that have an expressed interest in receiving loans from USET, but has not submitted calculations of potential job creation resulting from increases of exports of the category of goods exported by those companies. The petitioner has not demonstrated that the DOC report supports his contention that \$500,000 in available capital would result in at least \$1,000,000 in increased exports and in the indirect creation of at least ten jobs. For these reasons, it cannot be concluded that the petitioner's job creation projection of 15 jobs is based on an economically or statistically valid forecasting tool.

In addition, counsel's argument that the petitioner's business plan was adequately detailed and satisfied the requirements set forth in Matter of Ho, I.D. 3362 (Assoc. Comm., Ex., July 31, 1998) cannot be accepted. In that decision, the Associate Commissioner stated that a qualifying business plan, in part, should contain, at a minimum, "a market analysis, including the names of competing businesses." The petitioner merely asserted that USET would successfully compete with traditional commercial lending institutions by offering a better rate of interest and by offering services to businesses that are unable to obtain this type of loan from commercial lending institutions. However, the petitioner did not provide evidence to support these general claims. The

petitioner did not state the rate of interest its loans would bear<sup>3</sup> or show what the rates from institutional commercial lenders were. Nor did the petitioner submit evidence to persuasively demonstrate that any market actually exists for a non-institutional lender to provide "pre-export working capital loans" in the manner described in the business plan. For example, the petitioner did not demonstrate that there are other financial institutions engaged in such business activities or even that such non-institutional lending practices are lawful under applicable federal, state and local regulations. The petitioner did not identify potential competitors or explain that his is the first such business to offer this service. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). It cannot be concluded that the petitioner's business plan established that the requisite job creation would, in fact, occur as a result of his intended investment.

Therefore, the petitioner has not demonstrated that the requisite indirect employment creation would occur through increased exports as a result of his investment. Absent establishment of eligibility for indirect employment creation, the petitioner must instead demonstrate direct employment creation.

8 C.F.R. 204.6(j)(4)(i) states:

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

(A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or

(B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

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<sup>3</sup> The Asset Management Agreement signed by USET and Amtrade states at clause #2 that [redacted] management fee is 8 percent per annum of all capital contributed. It may then be assumed that the loan rates to export businesses would exceed the threshold of 8 percent.

Although [REDACTED] WTI and IPS may have a certain number of employees of their own, the petitioner did not assert a claim or submit any evidence that the requirement of new job creation would be satisfied by direct employment created by USET. Therefore, the petitioner has failed to meet the employment-creation requirement.

#### QUALIFYING CAPITAL INVESTMENT

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

*Capital* means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. All capital shall be valued at fair market value in United States dollars.

*Commercial enterprise* means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned. This definition includes a commercial enterprise consisting of a holding company and its wholly-owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business. This definition shall not include a non-commercial activity such as owning and operating a personal residence.

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*Invest* means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

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

(2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to

invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:

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

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

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

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

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

In the memorandum accompanying the Form I-526, the petitioner stated that he was in the process of investing \$525,000 into USET. The contributions of USES and Amtrade, if any, were not stated. The petitioner explained that \$25,000 would be reserved for expenses of the Partnership. The petitioner's investment of capital was described as an initial deposit of \$125,000 into an escrow account and an obligation to pay the remaining \$400,000 upon approval of the petition and admission as a permanent resident.

The petitioner executed an undated "Agreement to Form a Limited Partnership and Limited Power of Attorney for Limited Partner" (the "Agreement") wherein the petitioner agreed to the terms of investment with the initial contribution being made at the time the

Agreement was executed and the balance being remitted on occurrence of either issuance of the immigrant visa or adjustment of status to permanent resident.

The director rejected the investment plan finding that there was no evidence that the funds placed into the escrow account were those of the petitioner and that the obligation to pay an additional \$400,000 was tantamount to an unsecured promissory note and disqualifying under 8 C.F.R. 204.6(j)(2) and Matter of Hsiung, Int. Dec. 3361 (Assoc. Comm., Ex., July 31, 1998).

On certification, counsel explained that the petitioner's initial deposit into escrow was transferred from the escrow account of his former withdrawn petition in the amount of \$131,244.72 and argued that the petitioner's check to the law firm managing the original escrow account established that the funds were in fact the petitioner's funds. Counsel further argued that the petitioner has demonstrated his possession of sufficient funds to meet his obligation to make the \$400,000 final payment and that he has adequately demonstrated that he is "in the process" of investing the requisite amount of capital.

Regarding the funds in escrow, the record contains a check drawn on the petitioner's Charles Schwab account dated August 27, 1997, in the amount of \$135,000, payable to [REDACTED] Ac," a wire transfer dated September 11, 1998 from an account of [REDACTED] Enterprise Bank, St. Louis, Missouri to "Esc Account of Consumer Real Est Title Acct," Citizens National Bank, Laurel, Maryland, and an undated Escrow Agreement executed by the petitioner that contains, in part, an agreement to release the funds upon notification by counsel that the immigrant visa has been issued.

Despite counsel's explanation of the financial arrangements of the petitioner's having withdrawn his original petition, having obtained new counsel, and having filed a new and amended petition, it cannot be concluded that the funds transferred from one escrow account to another escrow account are necessarily those of the petitioner. The petitioner submitted no documentation that the wire transfer amount of \$131,244.72<sup>4</sup> was in fact his property. The escrow agreement submitted refers only to \$125,000. The petitioner submitted no form of receipt or account statement showing his ownership of those funds. Furthermore, both the Agreement and the Escrow Agreement, purportedly binding time-sensitive contracts pertaining to substantial amounts of cash, are undated and were, therefore, not properly executed under standard business practices.

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<sup>4</sup> Counsel explained that the amount of \$131,244.72 is the balance from the original \$135,000, plus interest, less expenses deducted by the original law firm.

The lack of accounting for the balance of \$6,244.72 is similarly noteworthy. Additionally, section 3(C) of the Escrow Agreement provided that if the instant petition were not approved within 12 months of filing, the funds would be returned to the petitioner. It is noted that the petition was filed on September 14, 1998, and more than 12 months have passed. There is no evidence that the funds remain in escrow. For these reasons, the petitioner has failed to demonstrate that the claimed \$125,000 initial contribution represents a qualifying investment of any amount of personally owned capital into the new commercial enterprise.

Regarding the purported obligation to make the final payment of \$400,000, the fact remains that the obligation is not secured as required by 8 C.F.R. 204.6(j)(2)(v). In the brief on certification, counsel argued that the petitioner has since executed an "advance irrevocable Sell Order" with his [REDACTED] account to make the \$400,000 available upon visa issuance.

The argument is not persuasive. The petitioner's intent to invest the \$400,000 if the petition is approved is essentially in the form of a promissory note. All capital must be valued at fair market value. 8 C.F.R. 204.6(e). As stated in Matter of Izumii, *supra*, a promissory note can constitute capital itself or can constitute evidence that a petitioner is in the process of investing cash. In determining the value of a promissory note, the assets securing the note must be examined. That is, the assets securing the note must be specifically identified as securing the note, the assets must belong to the petitioner personally, the security interests must be perfected to the extent provided for by the jurisdiction in which the assets are located, the assets must be fully amenable to seizure by a U.S. note holder, the assets must have an adequate fair market value, and the costs of pursuing the assets must be taken into account. Matter of Hsiung, I.D. 3361 (Assoc. Comm., Ex., July 31, 1998). If these conditions are not met, the promissory note is meaningless and unenforceable.<sup>5</sup>

The "irrevocable Sell Order" does not constitute a perfected security interest of the petitioner's obligation under the Agreement. Therefore, the obligation remains an unsecured promise to invest capital into the new commercial enterprise, but does not

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<sup>5</sup>8 C.F.R. 204.6(e) specifies that all capital must be valued at fair market value in United States dollars. Therefore, in order for a promissory note to qualify as "capital" of a certain amount, the note would have to be shown to have an adequate fair market value in addition to placing the petitioner's personal assets at risk. Assessment of fair market value would include an assessment of the note's present value, among other factors. The petitioner here has not presented any evidence as to the fair market value of his promissory note.

constitute an actual investment of capital or proof of being actively in the process of investing capital. At best, such an obligation shows a mere intent to invest, which is insufficient.

#### CAPITAL AT RISK

8 C.F.R. 204.6(j)(2) states that, whether a petitioner is claiming to have already invested the full amount of capital or is claiming merely to be in the process of investing the capital, the full amount must already be at risk, at the time of filing, in profit-generating activities. Simply making funds available to the commercial enterprise is not the same as placing that money at risk. In Matter of Ho, Int. Dec. 3362 (Assoc. Comm., Ex., July 31, 1998), it was held that before capital made available to a commercial enterprise can be considered to be at risk, a petitioner must present some evidence of the actual undertaking of meaningful concrete business activity. In that case, the petitioner had placed the requisite amount of capital in a corporate bank account and had leased business premises. The Associate Commissioner held that this was insufficient to establish that the entire amount of capital was at risk in the absence of any evidence of meaningful business activity.

In this case, the petitioner participated in establishing a Maryland limited partnership, registered that business in Louisiana, allegedly placed \$125,000 in a refundable escrow account, and signed a contractual obligation to remit the balance of \$400,000 upon visa issuance. Based on the evidence furnished, it cannot be concluded that the petitioner has demonstrated meaningful business activity and thereby he has failed to establish that he has placed capital at risk in profit generating activities as required. For example, the petitioner failed to produce any form of business license to operate a financial institution in Louisiana or any explanation of the federal, state, parish, or municipal licenses that would be required to lawfully operate such a business. See 8 C.F.R. 204.6(j)(1)(ii). In addition, the petitioner's business plan did not contain the requisite market analysis showing that such a business would satisfy the legislative intent of the statute of benefiting the economy and creating jobs. Given counsel's claim that the instant petition is the first of an unspecified number of future such partnerships that would each invest at least \$500,000 in a highly specialized and highly targeted market, the lack of a truly comprehensive business plan is inexplicable. Additionally, the unsecured promissory note is not evidence of capital placed at risk. The petitioner's \$400,000, or 80 percent of the claimed investment, represented by an unsecured promissory note clearly cannot be considered to be at risk as of the filing date of the petition. For these reasons, the petitioner has failed to establish that he has placed either \$500,000 or \$1,000,000 at risk in a profit generating commercial enterprise.

Counsel argues on certification that the petitioner has more than sufficient financial assets in his [REDACTED] account to honor the \$400,000 obligation. The fact that the petitioner may have the financial ability to make an investment is insufficient to establish eligibility in this proceeding. The regulations clearly require a demonstration that the assets invested be at risk in profit-generating activities of the new commercial enterprise. The petitioner's [REDACTED] account is not the new commercial enterprise at issue in this proceeding.

#### SOURCE OF FUNDS

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

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

(i) Foreign business registration records;

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

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

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

As mentioned earlier, the petitioner has failed to document the path of the funds that were deposited into the escrow account. It is not known if the funds originated from the petitioner, or from another client of [REDACTED]. Therefore, it cannot be concluded that the initial amount of \$125,000, which in any event may have since been returned to the petitioner upon the expiration of the escrow, were funds belonging to the petitioner and lawfully acquired by him. In addition, the petitioner has failed to establish that the remaining \$400,000 has been invested or is in the process of being invested.

**MANAGEMENT**

8 C.F.R. 204.6(j)(5) states:

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.

The Agreement, which controls the petitioner's admission to the limited partnership, contains no reference to his duties and responsibilities and therefore does not constitute evidence that he would have the rights, powers, and duties normally granted to limited partners under the Uniform Limited Partnership Act. In this case, USET serves only as a holding company and the actual management of the enterprise has been relegated to Amtrade. There is no evidence that the petitioner would be other than a passive investor and thereby he does not qualify for alien entrepreneur classification within the meaning of § 203(b)(5) of the Act.

**CONCLUSION**

The petitioner is ineligible for classification as an alien entrepreneur because he has failed to meet the capital investment minimum of \$1,000,000, has failed to show that he has made a qualifying at-risk investment in a new commercial enterprise, has failed to establish that any funds invested were his funds, has failed to demonstrate that the investment will result in the requisite employment creation, and has failed to establish the requisite entrepreneurial control of the new commercial enterprise.

For these reasons, the petitioner has failed to overcome the objections of the center director and the director's decision therefore will be affirmed.

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

**ORDER:** The decision of the director is affirmed; the petition is denied.