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U.S. Department of Justice

Immigration and Naturalization Service

prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Texas Service Center Date: JAN 15 2003

IN RE: Petitioner: [redacted]

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

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

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

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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hayward

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

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

The director determined that the petitioner had failed to demonstrate that he had made a qualifying investment of lawfully obtained funds or that he would create the requisite employment.

On appeal, counsel argues that the new evidence in addition to the evidence previously submitted is sufficient to establish the petitioner's eligibility. Counsel notes that while the petitioner submitted his personal foreign tax returns, the director did not consider those documents. The petitioner submits a new business plan, a corporate tax return, and Forms I-9.

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

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

The record indicates that the petition is based on an investment in a business, Beauty Gems, Inc., not located in a targeted employment area for which the required amount of capital invested has been adjusted downward. Thus, the required amount of capital in this case is $1,000,000.

INVESTMENT OF CAPITAL

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

> *Capital* means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. ...

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

On the petition, the petitioner indicated that he made an initial investment of $250,000 on October 10, 1997 and had made a total investment of $1,065,494. The petitioner submitted an accountant's appraisal of the [redacted] indicating that the appraised value of that business, including goodwill, was $1,065,494. The appraisal indicated that the total value of the business' assets was $1,074,000.

On October 9, 2000, the director requested additional evidence of the petitioner's personal investment, quoting the above regulations. In response, the petitioner submitted a new appraisal reiterating the previously claimed value of the assets as of February 29, 2000 and asserting that the value would rise to $1,798,000 by the end of 2002. The petitioner also submitted bills of sale for the purchase of several existing convenience stores in Connecticut and Massachusetts. Specifically, the petitioner purchased a store from DB Marketing on May 14, 1998 for $40,671; a store from Thomas Foods, Inc. on October 9, 1998 for $70,000; a store from Duggan Enterprises on May 18, 1999 for S35,000 plus inventory at 70 percent of retail price; and three stores from Cumberland Farms on February 26, 1999, November 17, 1999 and April 25, 2000 for $75,000, $110,000 and $155,000. These purchases total $418,171 plus the cost of inventory for the store sold by Duggan Enterprises. The petitioner also submitted several checks related to these purchases. Most of the checks are either issued by [redacted] or are cashier checks purchased by [redacted]. The only checks from the petitioner personally are for the purchase of the store from Thomas Foods, Inc. amounting to $48,382. Finally, the petitioner submitted invoices and bank statements for the company and himself. The statements do not readily reflect the transfer of any money from the petitioner to the company.

The director noted that a corporation is a separate legal entity from its shareholders and concluded that the expenditures by [redacted] could not be considered the petitioner's personal investment. The director further noted that the record lacked evidence that the petitioner had deposited any funds into the new commercial enterprise. Thus, the director concluded that the petitioner's claim to have invested $1,065,494 was not supported by the record.

On appeal, counsel does not address the director's concerns on this issue. The petitioner notes that the record includes sales contracts, receipts for inventory, security deposits, invoices, bank checks and company checks. The petitioner submits [redacted] 2000 tax return. The tax return, schedule L, reflects that the company's assets grew from $534,793 to $687,371, the capital stock remained at $1,000, the paid-in-capital remained at zero, the loans from shareholders increased from $374,687 to $457,653, and the unappropriated retained earnings increased from $107,320 to $175,860 during that year.

We concur with the director that evidence of [redacted] expenditures, such as sales contracts, company checks, and invoices, is not evidence of the petitioner's personal investment. As stated by the director, a corporation is a separate and distinct legal entity from its owners or stockholders. See Matter of Tessel, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980); Matter of Aphrodite Investments Limited, 17 I&N Dec. 530 (Comm. 1980); Matter of M-, 8 I&N Dec. 24 (BIA 1958; A.G. 1958). As an entity, a corporation can derive funds from many sources other than equity investments by its shareholders. For example, shareholders can loan money to the corporation. As quoted above, the definition of invest at 8 C.F.R. 204.6(e) specifically precludes debt arrangements with the new commercial enterprise. In addition, a corporation can borrow money from a third party. Money borrowed from a bank that is secured by the assets of the company cannot be considered part of the petitioner's qualifying investment, even if the petitioner offers a personal guarantee. See 8 C.F.R. 204l.6(c)(definition of capital) and Matter of

Soffici, 22 I&N Dec. 158, 162 (Comm. 1998). Finally, a corporation can simply reinvest its own proceeds. Since a corporation is considered a separate legal entity from its shareholders, a reinvestment of proceeds that have not been removed and taxed cannot be considered an investment by a shareholder. See generally, De Jong v. INS, Case No. 6:94 CV 850 (E.D. Texas January 17, 1997); and Matter of Izummi, 22 I&N Dec. 169, 195 (Comm. 1998).

Since a corporation can obtain funds in all of the above ways that do not constitute a capital investment, a petitioner cannot simply document the company's expenses or provide an "appraisal" of the company's value, including goodwill. It is noted that the regulations provide a list of evidence required to establish investment. This list does not include appraisals. Moreover, the appraisal reflecting assets of $1,074,000 as of February 29, 2000 is inconsistent with the tax return reflecting assets of only $687,371 by the end of 2000.

A petitioner must provide transactional evidence documenting his own investment in the commercial enterprise at issue. As stated by the director, the record contains no transactional evidence reflecting that the petitioner transferred any funds from his accounts at Sovereign Bank or Boston Bank to [redacted]. Without such evidence or an explanation of dates of withdrawals and deposits that correlate between the personal and corporate bank statements provided, the petitioner cannot establish that he transferred any money to [redacted]. As stated above, the only corporate expenses paid by the petitioner personally were the acquisition costs for the store purchased from Thomas Foods, Inc. In addition, the petitioner purchased the first store in May 1998 and the final store on April 25, 2000. Any proceeds from earlier stores used to purchase additional stores cannot be considered part of the petitioner's personal investment for the reasons discussed above.

Not only was the evidence submitted prior to the appeal insufficient to establish a qualifying investment, the tax return submitted on appeal directly contradicts the petitioner's claim to have invested over $1,000,000. As noted above, schedule L only reflects a capital investment of $1,000. As stated above, shareholder loans are precluded from the regulatory definition of "invest." As such, the petitioner's loan of $457,653 to the new commercial enterprise cannot be considered part of the petitioner's at-risk investment.

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:
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> (i) Foreign business registration records;
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> (ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal

tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

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

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

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. Matter of Ho, 22 I&N Dec. 201, 210-211 (Comm. 1998); Matter of Izummi, supra, at 195. Without documentation of the path of the funds, the petitioner cannot meet his burden of establishing that the funds are his own funds. Id. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). These "hypertechnical" requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin. Spencer Enterprises, Inc. v. United States, CIV-F-99-6117, 22 (E.D. Calif. 2001)(affirming a finding that a petitioner had failed to establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

Initially, the petitioner submitted no evidence of how he accumulated his funds. In fact, as discussed above, the petitioner did not even submit any evidence tracing most of the funds used to purchase the stores back to the petitioner's personal accounts either in the United States or overseas.

In response to the director's request for additional documentation, the petitioner asserted that he initially transferred some money from Pakistan but that Pakistani law subsequently barred such transfers, forcing him to rely on people to carry money from Pakistan to the United States. The petitioner submitted:

1. A certificate reflecting his joint ownership of property valued at 10,080,700 Pakistani rupees (approximately $179,276);
2. Six personal monthly income statements from between December 1993 and 1998 reflecting a maximum income of 245,000 rupees ($4,357);
3. An affidavit from three individuals in Pakistan claiming to have purchased property from the petitioner in 1998 for 5,000,000 rupees ($88,921), 5,000,000 rupees ($88,921), and 10,000,000 rupees ($177,842);
4. March 21, 1998 and May 26, 1998 transfer receipts for the transfer of $19,500 and $6,400 to the petitioner's Bank of Boston account 919-88632 ordered by Mohammd Zardad;
5. News articles regarding the suspension of foreign exchange in Pakistan;

6. Several Pakistani receipts for changing U.S. dollars to rupees;
7. A business registration for a partnership in Bangkok, M.C.S. Ltd., reflecting that in 1995 the petitioner was residing in Bangkok, serving as a director of that partnership and owned 29,000 shares; and
8. Evidence of the petitioner's assets in the United States.

The director concluded that the petitioner had failed to submit tax returns. On appeal, counsel asserts that the petitioner submitted tax returns from the United States and Pakistan.

While the record does include the Pakistani tax statements discussed above, the petitioner has never submitted his personal U.S. tax returns. We note that the petitioner did not indicate on the petition that he is residing in the United States in lawful status. Any money earned unlawfully in the United States cannot be considered lawfully obtained.

Regarding the Pakistani tax statements, they reflect a monthly income of no more than $4,357 or an annual income of no more than $52,284. Even assuming minimal personal expenses, we cannot conclude that this income can account for the accumulation of $1,000,000. While the petitioner appears to have worked for and had a business interest in a Bangkok partnership during 1995, the petitioner did not submit Thai income tax returns.

The affidavits from the individuals who purportedly purchased property from the petitioner are minimal evidence of the petitioner's sale of his property. The record does not include the sales contracts. Moreover, it is not clear that the petitioner's income can account for his initial acquisition of these properties.

The money transfers from Pakistan are for only $19,500 and $6,400. Moreover, they were transferred by order of [redacted] the petitioner's personal account at the Bank of Boston. The record does not include any evidence that those funds were subsequently transferred to [redacted]. Further, while the affiants claiming to have purchased property from the petitioner identify [redacted] as the petitioner's father, there is no evidence that the money he transferred to the petitioner is the petitioner's money or whether it was gifted or loaned to the petitioner.

The newspaper articles regarding Pakistani policy on money transfers are not persuasive. First, the articles indicate that the measures were intended to be temporary. The petitioner has not established how long these measures were in place. Regardless, it is the petitioner's burden to trace his funds to a lawful source.

Finally, the International Money Exchanger "selling receipts" for funds exchanged in Pakistan are not evidence of an investment into the new commercial enterprise. The receipt form requests a date, name and address, passport number, nationality, currency amount, and traveler check number. Handwritten above the printed "name and address" are the words "sended [sic] to." The petitioner's name and U.S. address appears on the "name and address" line and is the only name on the form. The receipts, however, are not transfer receipts, but money exchange receipts. Such receipts can only document that U.S. dollars were purchased, not that they were wired to

the petitioner. Thus, we cannot conclude that International Money Exchanger was the entity sending the funds. A review of the form reflects that the "name and address" line is clearly for the person changing the money. It is unclear why the International Money Exchanger would want the name of the person to whom the exchanger planned to send the money as opposed to the name of the person actually exchanging the money. Moreover, it is not clear why the exchanger would volunteer such information as the petitioner himself has stated that sending foreign currency outside of Pakistan was illegal at the time. Further, the news articles suggest that even withdrawing foreign currency was banned, at least temporarily, in Pakistan. In light of the above, these forms are suspect.

Regardless, these forms do not demonstrate the source of the money exchanged. According to the date of entry on the petitioner's Form I-526, he was in the United States when these amounts were exchanged. The name and address of the person who allegedly exchanged this money does not appear on the receipt. Finally, it is not clear that this money was ultimately placed in one of Beauty Gems' accounts.

In light of the above, the petitioner has failed to trace any funds deposited with Beauty Gems to him personally. Moreover, he has not established how he lawfully accumulated the more than $1,000,000 he claims to have invested.

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

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

> *Full-time employment* means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week.

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

Finally, 8 C.F.R. 204.6(g)(2) relates to multiple investors and states, in pertinent part:

> 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.

Full-time employment means continuous, permanent employment. See Spencer Enterprises, Inc. v. United States, CIV-F-99-6117, 19 (E.D. Calif. 2001)(finding this construction not to be an abuse of discretion).

Pursuant to 8 C.F.R. 204.6(j)(4)(i)(B), if the employment-creation requirement has not been satisfied prior to filing the petition, the petitioner must submit a "comprehensive business plan" which demonstrates 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." To be considered comprehensive, a business plan must be sufficiently detailed to permit the Service to reasonably conclude that the enterprise has the potential to meet the job-creation requirements.

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. Matter of Ho, supra. Elaborating on the contents of an acceptable business plan, Matter of Ho states the following:

> The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should

> explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

Id. at 213.

On the petition, the petitioner indicated that the business had two employees at the time of his investment and 10 currently, all of which positions were created by his investment. Initially, the petitioner submitted 1999 Form W-3 reflecting that the company issued nine Forms W-2 wage and tax statements and the accompanying nine Forms W-2. The petitioner also submitted a pay stub and paycheck for an additional employee.

In response to the petitioner's request for additional documentation, the petitioner submitted a new appraisal that includes some business plan projections. Specifically, the appraisal projected 12 employees at the end of 2000 and 15 at the end of 2002. The petitioner also included payroll records reflecting employment increasing to 10 employees (in addition to the petitioner) by the end of June 2000.

The director stated that the petitioner had not submitted payroll or tax records for the employees. The director also concluded that the business plan projections included in the appraisal did not meet the requirements of a business plan as set forth in Matter of Ho, supra.

On appeal, the petitioner asserts that Forms 941, and state income and unemployment tax documentation, were either previously submitted or are being submitted on appeal. The record does not contain such evidence. On appeal, however, the petitioner did submit Forms I-9 for 11 employees and a more detailed business plan.

The director erred in stating that payroll documentation had not been submitted. These records, however, reflect that two of the employees could not have been working full-time for minimum wage.

Regardless, while not raised by the director,[1] the record contains no evidence that the petitioner has created any *new* jobs. All of the sales contracts unambiguously reflect that the petitioner purchased operational stores. For example, all of the sales contracts with Cumberland Farms include "goodwill" as part of the purchase price and were contingent on the petitioner leasing the store location from Cumberland Farms. The contract with Thomas Foods also includes the goodwill of the business. Goodwill is defined as:

> A business's reputation, patronage, and other intangible assets that are considered when appraising the business, esp. for purchase; the ability to earn income in

[1] An EB-5 application that fails to comply with the specific technical requirements of the law may be denied even if the Service Center does not identify all grounds for denial. Spencer Enterprises, Inc. v. United States, CIV-F-99-6117, 29 (E.D. Calif. 2001).

> excess of the income that would be expected from the business viewed as a mere collection of assets.

Black's Law Dictionary, 703 (7th ed. 1999). This dictionary further provides that goodwill is included in the going-concern value of a business, which is defined as:

> The value of a commercial enterprise's assets or the enterprise itself as an active business with future earning power, *as opposed to the liquidation value of the business or its assets.*

(Emphasis added.) Id. at 1549. Thus, it is difficult to imagine how a closed store could have any goodwill. The bill of sale for the purchase from Duggan Enterprises provides:

> Seller represents and warrants that from the date hereof through closing, its business shall continue in the ordinary course and there shall be no material adverse change in said business.

In light of this clause, it is clear that Duggan Enterprises sold the petitioner an operational store.[2] As implied in Matter of Soffici, supra, at 167, and Matter of Hsiung, 22 I&N Dec. 201, 204-205 (Comm. 1998), when purchasing an existing business, a petitioner must create 10 jobs in addition to the previous positions at the business. A petitioner may not cause a net loss of employment. Without evidence of how many employees worked at all of the purchased stores prior to the date of purchase, the petitioner cannot demonstrate that he has created 10 new jobs.

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

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

8 C.F.R. 204.6(e) states that:

> *Troubled business* means a business that has been in existence for at least two years, has incurred a net loss for accounting purposes (determined on the basis of generally accepted accounting principles) during the twelve or twenty-four month

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[2] The purchase of existing, operational stores also raises the question of whether these stores are "new" as defined in the regulations as "established after November 29, 1990." 8 C.F.R. 204.6(e). The record contains no evidence as to when the prior owners established these stores. In fact, the record doesn't even contain the articles of incorporation for [redacted]

> 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 per cent 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.

The petitioner has not submitted any evidence that any of the stores purchased were troubled businesses. Regardless, without evidence of the number of employees at the stores prior to the date of purchase, the petitioner cannot even establish that he has maintained previous levels of employment at all of the stores.

For all of the reasons set forth above, considered in sum and as alternative grounds for denial, this petition cannot be approved.

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

ORDER: The appeal is dismissed.