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**U.S. Department of Justice**

Immigration and Naturalization Service

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*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 31 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]

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 his funds were lawfully obtained.

On appeal, counsel argues that the record adequately establishes that the petitioner obtained his wealth through legitimate business transactions.

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) 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
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> (ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

The record indicates that the petition is based on an investment in a business, Re/Max Hometown, 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.

The petition was filed on November 17, 2001. The record reflects that the petitioner invested, through the purchase of outstanding and newly issued stock, $75,000 on January 16, 1997, $160,000 on January 21, 1997, $210,200 on February 5, 1997, $550,000 on December 1, 1999, and $17,000 on November 17, 1999, for a total of $1,012,200.[1] The petitioner has adequately demonstrated that these funds were used to expand the company and pay off its debts. In addition, the record includes wage and withholding reports that reflect that the Re/Max Hometown employed six employees as of January 1997, only four of whom could have worked full-time at minimum wage, and 20 employees as of June 2000, 18 of whom had wages consistent with full-time employment. These documents are supported by wage and tax statements. The petitioner is an officer of the corporation. The basis of the director's decision is that the petitioner did not demonstrate the source of his funds.

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[1] The record contains evidence that suggests additional investment in the new commercial enterprise and a related mortgage company, but some of those checks are not cancelled or supported by bank statements or reflect that they are actually loans.

**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;
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> (iii) Evidence identifying any other source(s) of capital; or
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> (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*, 22 I&N Dec. 169, 195 (Comm. 1998). 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).

In his initial cover letter, counsel asserted that the petitioner acquired his investment funds by selling his interests in several Venezuelan companies. The petitioner submitted the following documentation of these transactions:

1. A contract whereby the petitioner sold his 75 shares in H.D. Ocean's Trading for $975,000 on December 12, 1996. The Mercantile Registry I reflects that H.D.

Ocean's Trading was established on July 1, 1996, at which time the petitioner purchased his 75 shares for 1,875,000 Bolivares, approximately $3,987.[2]

2. A contract whereby the petitioner sold his 750 shares in Tecnel De Venezuela for $1,235,000 on February 18, 1996. The First Mercantile Registry reflects that the company was established on June 15, 1994, on which date the petitioner purchased his 750 shares for 1,000 Bolivares, approximately $4,310.[3]

3. A contract whereby the petitioner and [redacted] the petitioner's wife, sold their shares in Laboratorio Clinico La Fundacion for $500,000 on September 11, 1995. The Citizen First Mercantile Registrar indicates that the petitioner [redacted] invested in this business on December 4, 1980 with 25,000 Bolivares each.[4]

4. A November 7, 1995 letter signed by the petitioner as President [redacted] the vice president of that company authorizing the transfer of $1,229,000 to the petitioner. The explanation of this document is that it reflects the petitioner's sale of his interest in [redacted] The letter makes no reference to such a sale. The notes for a July 28, 1995 shareholder's meeting [redacted] reflect that the petitioner attended this meeting as a guest, purchased 45 percent of that company's stock for 45,000,000 Bolivares, approximately $264,706,[5] and was elected president.

5. A bank statement for the petitioner's account, number 9101514025 at Eastern National Bank in Miami reflecting credit memos of $1,500,000 on November 13, 1995 and $292,140 on November 29, 1995.

6. A bank statement for the petitioner's account, number 9101614011 at Eastern National Bank in Miami reflecting withdrawals of $1,012,779 between May 30, 1996 and June 4, 1996. The remaining balance on that account was $1,209,072.

7. A letter from Eastern National Bank in Miami asserting that the petitioner and Yaneth Poletti maintain a joint certificate of deposit at that bank.

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[2] The exchange rate on that date was one U.S. dollar to 470.25 Venezuelan Bolivares according to www.oanda.com.

[3] The exchange rate on that date was one U.S. dollar to 174 Venezuelan Bolivares according to www.oanda.com.

[4] We were unable to determine the exchange rate for such an early date at www.oanda.com.

[5] The exchange rate on that date was one U.S. dollar to 170 Venezuelan Bolivares according to www.oanda.com.

8. Bank letters dated in 1996 and 1997 confirming that the petitioner maintained accounts at various Venezuelan and U.S. banks with balances ranging from five to seven figures in the U.S. and up to eight figures in Venezuela.

9. Sales contracts reflecting that the petitioner sold property purchased in 1984 on May 22, 1987 for 200,000 Bolivares; property purchased in 1996 on May 13, 1998 for 20,000,000 Bolivares; property purchased at an unknown time on September 3, 1997 for $71,000; property purchased in 1995 on December 22, 1997 for $220,000. The petitioner also submitted two contracts reflecting his November 14, 1996 purchase of two pieces of property in Venezuela. The price for the first property was 6,500,000 Bolivares. The contract submitted for the second property does not reflect the sales price.

10. The petitioner's tax returns reflecting "net gain" of 20,500,000 Bolivares (approximately $140,610) in 1997; 36,960,000 Bolivares (approximately $65,381) in 1996, 3,801,814 Bolivares (approximately $22,337) in 1994, and 2,918,898 Bolivares (approximately $27,459) in 1993. The petitioner's tax returns also show gross income of 7,623,403 Bolivares (approximately $44,791) in 1994 and 5,422,602 (approximately $51,012) in 1993.[6] The petitioner submitted an accountant's letter asserting that the petitioner's gross income was 60,975,000 Bolivares ($135,000 according to the accountant) in 1996.

On April 22, 2002, the director requested additional documentation, advising the petitioner that the record contained no evidence that the money referenced in the above sales contracts exchanged hands. In response, the petitioner submitted two wire transfer receipts reflecting the transfer [redacted] to the petitioner of $640,000 on April 10, 1996 and $343,000 on April 19, 1996. Counsel notes the submission of a letter from an executive at Thomas Cook, Inc., expressing satisfaction with its relationship with [redacted] This letter, however, implies that the petitioner had headed [redacted] for five years as of April 1996, a claim not supported by the minutes of the July 28, 1995 shareholder meeting at which the petitioner acquired shares for the first time and replaced the outgoing president. The director concluded that the petitioner had still not established that the money referenced in the contracts was paid to him.

On appeal, counsel reiterates that the petitioner sold his assets in [redacted] due to "growing instability and the devaluation of the countries [sic] currency." On page two of his brief, counsel notes that the sale prices specified in the contracts for the sale of the petitioner's interests in H.D. Ocean's Trading, [redacted] amount to $2,710,500. The petitioner submits a letter from his accountant, Nelson Figallo, who attests to the sales. When tracing money from Venezuela to the petitioner on page three of the brief, however, counsel refers to money transferred by Casa de Cambio Maracaibo.

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[6] The dollar amounts were approximated based on an exchange rate of one U.S. dollar to 504.76 Bolivares (1:504.76) on December 31, 1997, 1:565.25 on December 31, 1996, 1:170.17 on December 31, 1994, and 1:106.28 on December 31, 1993 according to www.oanda.com.

Counsel's arguments do not overcome the director's concerns. The record contains no evidence that the funds transferred [redacted] represent the funds realized upon the sale of the petitioner's interests in H.D. Ocean's Trading, [redacted] In fact, the petitioner purchased his interest [redacted] prior to selling his interest in the other three businesses.

While the record implies that the petitioner purchased his interests for little money and sold them at great gain, the record does not establish that these transactions are credible. The petitioner purchased his interest in H.D. Ocean's Trading for $3,987 on July 1, 1996. On December 12, 1996, the petitioner sold his interest for $975,000. Such a phenomenal increase in value over a mere six-month period during which time counsel concedes the Venezuelan economy was troubled requires a credible explanation supported by significant documentation, including transactional documentation evidencing that the exchange of money took place. Similarly, the petitioner purchased his interes [redacted] for $4,310 on June 15, 1994 and sold that interest for $1,235,000 on February 18, 1996. While this equally phenomenal increase in value took place over a slightly longer period of time, 20 months, such an increase still warrants some credible explanation and transactional documentation supporting the claim. Moreover, as stated above, the November 7, 1995 letter signed by the petitioner [redacted] authorizing the transfer of $1,229,000 to the petitioner makes no mention of the claimed sale of shares in [redacted] Once again, we note that the petitioner had only purchased his interest [redacted] for $264,706 on July 28, 1995, a mere four months prior to the date of the letter. Once again, this massive increase in value warrants a credible explanation.

Furthermore, the tax returns are inconsistent with the sales contracts submitted. The petitioner's 1996 tax return does not reflect the massive amounts of money he allegedly earned as a result of selling his interest in two businesses. The record does not establish or even suggest that Venezuela does not tax income derived from a gain on the sale of corporate shares. If such income is taxable, the petitioner's return should reflect income of $2,201,703 ($971,013[8] profit from the sale of his H.D. Ocean's Trading shares and $1,230,690[9] profit from the sale of his [redacted] As stated above, however, the petitioner's 1996 return reflects only $65,381 net income and the accountant letter only alleges a gross income of $135,000 that year. Similarly, the petitioner's 1995 tax return does not reflect the $964,294[10] profit from the alleged sale of his shares [redacted] in addition to whatever profit was realized on the sale of his interest in [redacted] Given the unexplained extraordinary returns in several brief periods and that these phenomenal profits are not represented on the

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[7] The record suggests more than a business relationship between the petitioner and Mr. Poletti as they own a joint bank account.

[8] The $975,000 gained from the sale minus the $3,987.24 for which the petitioner originally purchased the shares.

[9] The $1,235,000 gained from the sale minus the $4,310 for which the petitioner originally purchased the shares.

[10] The $1,229,000 gained from the alleged sale minus the $264,706 for which the petitioner originally purchased the shares.

petitioner's 1995 and 1996 tax returns, the letter from the petitioner's business lawyer submitted on appeal affirming that these transactions took place is insufficient. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Even if the petitioner were able to overcome the concerns addressed above by demonstrating that he purchased his interests for greater amounts than those calculated above, another problem would arise. It is insufficient to trace the source of one's funds back to a short-term transaction without documenting the ultimate source of wealth. To hold otherwise would render the source of funds requirement meaningless, as illegally obtained funds could be invested short term to effectively "launder" those funds. Assuming the petitioner purchased his interests for more than the amounts we have calculated, he would need to demonstrate where he obtained the funds used to purchase his short-term business investments.

Finally, the property sales fail to explain the source of the petitioner's funds as the petitioner has not documented how he accumulated the money to purchase the properties in the first place. As with his business interests, we note that the petitioner did not own most of these properties for a time period that could account for a massive increase in value. Finally, while the petitioner appears to hold significant wealth in several bank accounts and does appear to have held onto his interest in [redacted] for many years, his income tax returns reflect income far too small to account for the accumulation of such wealth.

In summary, where a petitioner claims that his funds were derived from several short-term investments, the petitioner must either establish the source of funds for those investments or, if the source of wealth is alleged to be extraordinary gains over a short period of time, the petitioner must provide a credible, documented explanation for how his shares exploded in value in such a short period of time in a troubled economy. The instant record does not resolve these issues. Thus, the petitioner's business and property interests in Venezuela fail to explain his apparent acquisition of significant wealth.

**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.

As stated above, the petitioner has established the creation of at least 10 full-time jobs. Beyond the decision of the director,[11] however, the petitioner has not established that these jobs are filled by qualifying employees by submitting Forms I-9 as required by 8 C.F.R. 204.6(j)(4)(i)(A).

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.

[11] 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).