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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: WAC-98-234-50001 Office: California Service Center Date: MAR 10 2003

IN RE: Petitioner: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Elizabeth Hayward

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO), summarily dismissed a subsequent appeal. The AAO affirmed its decision on motion. The matter is now before the AAO on a subsequent motion to reopen. The motion will be denied. The matter will be reopened by the AAO on its own motion, the appeal will be adjudicated on its merits and the petition will be denied.

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 had adequately explained how his business would require at least ten full-time employees.

On appeal, dated February 25, 2000, prior counsel requested an additional 90 days in which to submit a brief and/or additional evidence. On April 13, 2001, the AAO, having received nothing further, summarily dismissed the appeal.

On May 4, 2001, counsel filed a motion to reopen based on prior counsel's ineffectiveness. Counsel submitted correspondence with prior counsel who asserted that he had timely filed a brief. Counsel requested an additional 90 to 120 days to supplement the record.

On October 4, 2002, the AAO dismissed the motion, noting that counsel had not submitted any evidence that the AAO's prior decision was in error. Specifically, counsel had not submitted evidence that prior counsel had, in fact, submitted the brief. The AAO noted that the regulations do not provide for additional time to supplement a motion to reopen or reconsider. The AAO also stated, "even if prior counsel's ineffectiveness was cause to consider the appellate brief on motion, counsel has not submitted a copy of that brief or his own brief on the merits of the petition."

In his current motion, the petitioner notes that counsel submitted an affidavit from prior counsel asserting that he (prior counsel) had submitted a brief. The petitioner submitted all pages of this brief. As stated by the AAO previously, it was not counsel's contention in his initial motion that prior counsel had submitted a brief. Rather, counsel argued that prior counsel's failure to do so rendered him ineffective. The self-serving statement from prior counsel that he submitted the brief is insufficient. The record contains no receipt for the delivery of the brief. The AAO's rejection of counsel's request for additional time to supplement the record was also proper. We acknowledge that the initial motion did include portions of prior counsel's brief (pages two through five were missing) that prior counsel claims to have submitted on appeal. Thus, the previous decision was in error in implying that no pages of this brief were submitted. Nevertheless, the petitioner has not overcome the AAO's ultimate conclusion that the initial decision on the appeal was not in error. Thus, the current motion is denied.

Nevertheless, in the interest of fairness, we will reopen the matter on our own motion for the purpose of considering prior counsel's brief.

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

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

The record indicates that the petition is based on an investment in a business, Everlin Enterprise, 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.
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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.

On the petition, the petitioner asserted that he had invested $850,000 on June 10, 1996 and, as of the date of filing (August 31, 1999), had invested a total of $1,155,000. In his business plan, the petitioner claimed to have transferred $850,000 to Everlin on June 10, 1997 and an additional $305,000 on August 26, 1998.

The petitioner submitted a cancelled check dated June 10, 1997 issued by the petitioner to Everlin Enterprise for $850,000. The petitioner also submitted a bank letter from China Trust Bank reflecting that it transferred $305,000 from the petitioner's personal account number 08-301-719 to Everlin's corporate account number 08-305-439 on August 26, 1998.

The petitioner also submitted two share certificates, one for 8,500 shares dated June 16, 1997 and the other for 3,050 shares dated August 27, 1998 as well as two notices of transactions for the issuance of $850,000 in shares dated December 29, 1997 and $305,000 in shares dated August 27, 1998.

As evidence of the expenditure of capital, the petitioner submitted a deed for 2315 Pacific Coast Highway dated February 28, 1997.

The petitioner also submitted Everlin's corporate tax returns for 1996 and 1997. The 1996 tax return, representing a year when the corporation was inactive, reflect no capital and little activity. The 1997 tax return reflects sales of $324,408, interest income of $19,020, and no rental income. The return also reflects $24,000 in officer compensation and $122,719 in wages. Schedule L reflects that at the end of 1997, the corporation had $713,478 in cash, $251,044 in depreciable assets, $80,000 in land, no mortgages, $9,491 in shareholder loans, and $1,000,000 in stock.

On March 31, 1999, the director requested evidence that the $850,000 and $305,000 were deposited in Everlin's bank account and evidence as to how Everlin generated the gross sales listed on the tax returns. The director also requested an explanation for the indication of $1,000,000 in stock on the 1997 return when $305,000 was not transferred to Everlin until 1998.

In response, the petitioner submitted cancelled checks and bank statements reflecting the following transactions. As of January 1, 1997, Everlin had a beginning balance of $1,000 in its checking account at China Trust, account number 000860096. On January 7, 1997, the petitioner transferred $20,000 to that account and on February 7, 1997, the petitioner transferred another $10,000. The petitioner's parents transferred $315,000 to account number 000860096 on February 14, 1997. On November 19, 1996, Everlin withdrew $5,000 as a deposit for the purchase of 2315 Pacific Coast Highway and on February 27, 1997, Everlin paid the remaining $313,581.87 from account 000860096.

Also in 1997, the petitioner and his sister both transferred $850,000 each to Everlin's savings account, number 0008906548 on June 10, 1997. The sister's money derived from a check for $850,000 from her parents on June 9, 1997. According to counsel, the petitioner's sister decided against investing in Everlin. Thus, on July 29, 1997, Everlin transferred $450,000 to the petitioner's parents from account 0008906548. Finally, on June 30, 1997, the petitioner withdrew $559,100 from account 0008906548, apparently for the purchase of his personal residence.

Thus, as of December 31, 1997, assuming the initial $1,000 derived from the petitioner as claimed, Everlin had received $2,046,000 from the petitioner and his family and had returned $1,009,100, leaving $1,036,900.

Regarding the use of those funds and the operation of the business, the petitioner submitted an operating report for 1997 reflecting that the majority of the $324,408 in income came from management income. The expenses include $1,800 in rent for office space in addition to the capital expenditures for 2315 Pacific Coast Highway. The petitioner also submitted a list of managed property.

The director concluded that the evidence was inconsistent and, thus, could not be considered credible. Specifically, the director found that the cash transactions were not consistent with a capital investment of $1,000,000 and shareholder loan of $9,491 as reflected on the 1997 tax return.

In his brief allegedly submitted on appeal, prior counsel argues that the evidence submitted supports the petitioner's claim to have invested money gifted from his parents.

At issue in this section is whether the petitioner invested and placed at risk the necessary $1,000,000. We agree with the director that the record is inconsistent. The tax returns reflect $1,000,000 in capital as of the end of 1997. In response to the director's request for additional documentation, the petitioner did demonstrate that over $1,000,000 had been transferred to Everlin. The petitioner did not, however, demonstrate that all of that money represented a capital investment. While the petitioner's sister may have decided not to invest in Everlin, $400,000 of the $1,036,900 deposited and not returned in 1997 derived from the sister. (Everlin only returned $450,000 of the sister's $850,000 to the petitioner's parents.) In addition, the petitioner has not adequately documented that the $315,000 contributed by his parents represents his personal investment. We note that the petitioner had only received 8,500 shares as of the end of 1997. The share certificate issued to the petitioner in 1998 for 3,050 shares is certificate number two. Thus, the record does not reflect that, prior to 1998, Everlin issued shares to the petitioner (other than the 8,500 shares) or anyone else.

Beyond the director's concerns, however, the record does not reflect that the entire $1,036,900 (in addition to the $305,000 contributed in 1998) is sufficiently at risk. Despite prior counsel's claims that the tax returns were consistent with the purchase of more than one property, the record contains only one settlement document. Thus, the petitioner has only established capital expenses of $320,672.72 plus some organizational expenses. The record contains no evidence of contracts to purchase additional properties. The regulations provide that a petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk.

A mere deposit into a corporate money-market account, such that the petitioner himself still exercises sole control over the funds, hardly qualifies as an active, at-risk investment. *Matter of Ho*, 22 I&N Dec. 206, 209 (Comm. 1998). Even if a petitioner transfers the requisite amount of money, he must establish that he placed his own capital at risk. *Spencer Enterprises, Inc. v. United States*, CIV-F-99-6117, 27 (E.D. Calif. 2001)(citing *Matter of Ho*).

Matter of Ho, supra, at 210, states:

> Before it can be said that capital made available to a commercial enterprise has been placed at risk, a petitioner must present some evidence of the actual undertaking of business activity; otherwise, no assurance exists that the funds will in fact be used to carry out the business of the commercial enterprise. This petitioner's de minimus action of signing a lease agreement, without more, is not enough.

It is acknowledged that, unlike the petitioner in *Matter of Ho*, this petitioner has an operating business. Regardless, the case stands for the proposition that all the funds must be at risk. *Matter of Ho* states:

> Simply formulating an idea for future business activity, without taking meaningful concrete action, is similarly insufficient for a petitioner to meet the at-risk requirement.

Id. at 210. The lack of risk is clearly evidenced in this case by the fact that the petitioner removed $559,100 to purchase a personal residence. Whether or not these funds were over and above the $1,000,000 minimum investment, the removal of those funds reflects that the money in the money market and savings accounts were not at risk.

Finally, while the petitioner may have created 10 jobs, it is not clear that there is a sufficient nexus between the jobs and the bulk of the invested funds. The full amount of the requisite investment must be made available to the business most closely responsible for creating the employment upon which the petition is based. *Matter of Izummi*, 22 I&N Dec. 169, 179 (Comm. 1998). The record contains only one settlement document for the purchase of property. We concur with the director's concerns that the management of this one property cannot credibly explain the need for 10 full-time positions. The petitioner also submitted a list of managed property and the operating report includes funds for a rented office space. It appears that the majority of the employment results from the management of properties not owned by Everlin. In addition, it does not appear that the purchase of property in order to essentially be a customer for the management business is an employment generating activity. A petitioner may not meet the employment and investment requirements separately.

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
>
> (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.

In his business plan, the petitioner asserted that his invested funds derived from a gift from his parents and his own income. On the petition, the petitioner indicated that he arrived in the United States in 1997 with a visitor's visa, although he also indicated that he never worked without employment authorization.

The petitioner submitted a letter from [redacted] the petitioner's parents. In their joint letter, they assert that they transferred an unspecified amount of money to the petitioner as a gift "in installment since Feb. 14, 1997." The petitioner also submitted a wire transfer receipt for the transfer of $305,000 from [redacted] the petitioner's account [redacted] China Trust Bank on August 26, 1998.

As evidence of his own assets, the petitioner submitted evidence that, as of May 30, 1997, he had two time deposit accounts with Citibank with balances of 1,000,000 New Taiwan Dollars (approximately $35,855) each and his real estate interests. The petitioner also submitted his personal 1992 through 1996 taxes reflecting New Taiwan Dollar income of between 2,800,000 ($106,666) and 6,000,000 ($228,571).

In her request for additional documentation, the director requested evidence of the transfer of funds to the petitioner from his parents and evidence that the petitioner paid gift taxes. In response, the petitioner submitted cancelled checks and bank statements reflecting that his parents transferred $315,000 to Everlin on February 14, 1997 and $550,000 to the petitioner on June 9, 1997. The petitioner also submitted Form 3520 reporting a gift of $1,265,000 on June 10, 1997. Finally, the petitioner submitted the tax returns for his parents.

The director concluded that the Form 3520 was inconsistent with the petitioner's claim that his parents gifted $850,000 to the petitioner and $850,000 to his sister and the evidence that the parents transferred $315,000 to the business itself with no indication that the funds represented a gift to the petitioner. The director also questioned the source of the $850,000 the petitioner transferred to the business above and beyond the $550,000 provided by his parents. Further, the director questioned the source of the $305,000 transferred to the business on August 26, 1998. Finally, the director concluded that the petitioner's tax returns could not account for the portion of the petitioner's investment not derived from his parents.

Prior counsel asserts that all the invested funds were "drawn from bank sources" and that the director erred by presuming that the funds were acquired unlawfully. Prior counsel cites *McFarland v. Campbell*, 213 F.2d 855 (5th Cir. 1954) for the proposition that all things are presumed to have been done lawfully unless there is evidence to the contrary. Finally, prior counsel asserts that no gift tax was required and that the director erred in considering the petitioner's income level when the invested funds were derived from a gift.

We do not find prior counsel's arguments persuasive. Under the pertinent regulations, the petitioner has an affirmative burden to establish the lawful source of his funds. This burden has

been expressed in several precedent decisions and upheld in federal courts. Specifically, a petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. *Matter of Ho*, *supra*, at 210-211; *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).

In the instant case, we concur with the director that the petitioner has not resolved the lawful source of his funds. First, while the director expressed concern over the source of the $305,000 contributed to Everlin on August 26, 1998, the funds appear to derive from the $305,000 transferred to the petitioner by [redacted]n the same date. The petitioner has provided no evidence as to the relationship between himself and these individuals or any explanation for these funds.

Second, the parents' tax returns reflect annual income in the low $100,000 range. These funds cannot explain the accumulation of the $315,000 contributed to Everlin, the $550,000 gifted to the petitioner and the additional $850,000 gifted to his sister, regardless of whether she returned some of those funds.

Finally, while prior counsel asserts that the director erred in considering the petitioner's income, the petitioner himself asserted that some of his funds derived from his own income. Prior to the petitioner's transfer of $850,000 to Everlin, he had received only $550,000 from his parents. Thus, the petitioner needs to account for the accumulation of $300,000. While the petitioner owns several properties, this ownership leads to the question of where the petitioner obtained the funds to purchase these properties. Moreover, the petitioner does not claim to have sold these properties to obtain the $300,000 and the rental income is included within the petitioner's income expressed on his tax returns. These tax returns reflect income from these properties ranging between $106,000 to over $200,000. The petitioner has not established that he was able to accumulate the $300,000 not contributed by his parents.

For the above reasons, the petitioner has not established the lawful source of his funds.

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(e) states, in pertinent part:

> *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.

Section 203(b)(5)(D) of the Act, as amended, now provides:

> Full-Time Employment Defined – In this paragraph, the term 'full-time employment' means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

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 Everlin is a real estate development, management, and investment business. He claimed to have nine full-time employees. In his business plan, the petitioner indicated that Everlin has an "office general department" responsible for administrative duties; a real estate department responsible for real estate investment and research; a property management department responsible for maintenance, repair, and management of the properties; and a finance department responsible for accounting and bookkeeping. The petitioner submitted wage and withholding reports reflecting from five to eight employees during 1997 and the first quarter of 1998. Finally, the petitioner submitted an organizational chart reflecting nine employees.

In her request for additional documentation, the director requested additional evidence that the business would require 10 full-time employees. In response, the petitioner asserted that Everlin already employed 10 full-time employees. The petitioner submitted wage and withholding reports for 1999 supporting that assertion as well as an organizational chart and Forms I-9.

In her final decision, the director determined that the petitioner had not adequately documented that ownership of a single property could account for 10 full-time employees and noted the lack of evidence of the management contracts referenced in the operating report.

In his appellate brief, prior counsel asserts that the director erred in concluding that Everlin owned only one property. Regardless of whether the tax returns preclude the ownership of more than one property, the petitioner submitted evidence of only property purchased by Everlin. We concur that the management of this single property cannot account for the employment of 10 full-time employees. As stated above, the employment appears to result from a minor investment in a management service run from a leased office and insufficiently related to the bulk of the funds invested.

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.

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