



Immigration Plan Experts

Sample Free RFE Analysis

May 2019

Foreword

To most petitioners, an RFE means a step toward the denial of their application. We take a different view. While not a welcome response to an initial submission, it is nonetheless an opportunity. Why? An RFE is just that: It is a Request for Evidence. Usually, the USCIS wants more information or decides that the petition is completely missing some required information. The RFE is an opportunity to explain your petition in more detail to ensure that the adjudicator understands correctly what they are reading.

Our process for resolving RFEs is intended to ensure that you understand what the USCIS wants and why they want it. Once we have given you an evaluation like this and a proposal, you can decide if you would like to tackle it yourself or engage us. We will work with you alone, or with you and your attorney. If you are an attorney, please know that we have worked with many attorneys directly to resolve RFEs and NOIDs.

PROCESS

RFE Analysis: We will provide you with a free analysis like this to give you an idea of what you are up against. All we need is a copy of your RFE.

RFE RESOLUTION PROPOSAL: If, after reviewing the analysis, you would like a proposal, we will send you one that details our approach, the responsibilities of each of us, and a flat fee quote. At this point we will request the information originally submitted that relates to the RFE. This is necessary for us to give you a proposal.

Once we begin working together, we will provide you with guidance at every step with the documentation you need to gather and the best format in which to put it. We do guarantee that we will answer all parts of the RFE that do not require your input.

Our objective is to make this process as stress-free as is possible.

Valerie Braun
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Request for Evidence Analysis

This request for evidence was issued for Company Name and is due on April 19, 2019. This analysis is a point-by-point assessment of what needs to be done to satisfy the request.

SUMMARY OF ACTIONS REQUIRED AND KEY CONSIDERATIONS

In order to correct the deficiencies noted in this RFE, the Petitioner will at the very least be required to address the following:

- Validation that the business is located in a TEA.
- Up-to-date verification of the business location as a designated TEA. *Because of the constantly shifting change of demographics over time, there is virtually no instance in which an updated TEA can be avoided.*
- Verification that the business is already operational in a TEA or is an actual project (with documentation to prove it). *Based on past USCIS adjudications, only an address—while required—is insufficient and the viability of the Project must be established.*
- Documented evidence of the capital contribution having been invested; the source of the capital; the value of the capital; the path of the capital contributed from its source to investment into the project. *This will serve both to verify that the capital has been invested in fact but to establish that the capital was legally obtained.*
- Evidence that the capital is at risk—i.e., that it has been invested and is available for use by the job-creating enterprise. *The assumption can be made that once the capital has been made available for use by the Project that it is at risk.*
- Documentation establishing that if the business is currently viable, the required number of jobs have been created. This is already a noted deficiency because it has not been established that the business is operational so, at this point, the only alternative is to demonstrate how the jobs will be created. While the business plan cannot be materially changed at this point, the deficiencies noted can be addressed. There is virtually no instance in which a plan created years ago will avoid having to update things such as the demographic and market information. *The rationale here is that ever-changing market conditions and demographics may change whether or not a project is viable at present as it was when originally conceived.*
- Presented as an actual project, evidence has to be presented that the business is either operational or underway. If the latter, the project cannot be in the conceptual stage. Evidence such as the purchase of land, an executed bridge loan, permits, and construction contracts are acceptable here. *Quite simply, the USCIS does not want an investor to put their capital in a project that may or may not be completed.*

The main areas of focus are the Petitioner's capital contribution, the viability of the Project and a comprehensive Matter of Ho-compliant business plan.

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PROCEDURAL HISTORY AND COMMERCIAL ENTERPRISE BACKGROUND

Petitioner asserts eligibility based on an investment in a new commercial enterprise pursuant to the Immigrant Investor Program. The Form I-526 and the evidence presented assert that Petitioner invested \$500,000 into NCE Name, the new commercial enterprise (NCE), in 2016. The NCE proposed to pool up to \$3,000,000 from up to 6 immigrant investors. The NCE intends to start a business in Macadam, New Jersey. According to the Form I-526 and supporting evidence, the NCE plans to use the \$3,000,000 as a loan to partially fund the cost of the project. Petitioner asserts that the NCE is principally doing business within a targeted employment area (TEA).

Based upon a review of the initial record of evidence, U.S. Citizenship and Immigration Services (USCIS) concludes that Petitioner has not established eligibility for the benefit sought. To assist Petitioner in addressing the deficiencies in the record, USCIS is issuing this Request for Evidence. The deficiencies of the record are outlined below.

This investment is being made through a regional center.

ANALYSIS OF THE EVIDENCE

A. Evidence that the NCE is Principally Doing Business in a TEA

The USCIS has defined the term TEA (targeted employment area) and cited the applicable statutory and regulatory provisions for investor eligibility to invest in a TEA. Based on the USCIS Policy Manual and Matter of Izumi, they have stated that it is the JCE (job-creating enterprise) that must be doing business principally in the TEA, not the NCE (new commercial enterprise). That said, the next paragraph follows with the statement that the NCE is not principally doing business in the TEA.

Deficiency: Additional evidence must still be provided that the business is principally being conducted and creating jobs in the TEA. USCIS has suggested that Petitioner provide:

- Evidence that the new commercial enterprise is principally doing business in a TEA or rural area
- Evidence that the location is in a qualifying TEA or rural area
- Evidence documenting the location of the new commercial enterprise and any operations there
- Updated documentation designating the location as a TEA.

STATUTORY AND REGULATORY PROVISIONS REFERENCED FOR THIS ISSUE:

- 8 U.S.C § 1153(b)(5)(C)(ii)
- 8 C.F.R, § 204.6(f)(2)
- 8 U.S.C. § 1153(b)(5)(B)(ii)
- 8 U.S.C. § 1153(b)(5)(B)(iii)

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- 8 U.S.C. § 1153(b)(5)(B)(i)-(ii)
- 8 C.F.R. § 204.6(i)(6)
- 8 C.F.R. § 204.6(e)
- Matter of Ho, 22 I&N Dec. 206 (Assoc, Comm'r 1998)
- USCIS Policy Manual, Volume 6, Part G, Chapter 2, Section A(5) (citing 8 C.F.R. § 204.6(i)(6) and Matter of Izummi, 22 I&N Dec. 169, 171 -73 (Assoc. Comm'r 1998))

B. REQUIRED AMOUNT OF CAPITAL

Citing applicable statutory and regulatory provisions, the USCIS has restated the requirement for the investor to invest \$1,000,000 (or \$500,000) in the new commercial enterprise. The capital must be invested in a business that is principally doing business in—and creating jobs in—a TEA. In this section, the issue is that the amount invested (\$1,000,000 or \$500,000) must be lawfully-derived and of fair market value in US dollars. The capital investment is subsequently defined. Importantly, the investor must have access to the capital without restriction; and, the investment cannot be used to incur debt. The investor must establish that the capital is at risk; and, that he/she is the legal owner of the invested capital. This requirement as well is based on applicable statutory and regulatory provisions.

DEFICIENCY: The original submission does not establish sufficiently that the required capital (valued at \$1,000,000 or \$500,000) has or is being invested. Likewise, the submission does not demonstrate adequately the source of capital, the value of the capital invested and the investor's ownership of them. USCIS has suggested that the Petitioner can satisfy this deficiency by providing such documentation as:

- Evidence of assets purchased for the US enterprise
- Evidence of all property transferred for use by the US enterprise
- Evidence of monies transferred or committed to the NCE
- Evidence of investor current net worth
- Audited financial statements
- Documentation of gifts to the Petitioner.

STATUTORY AND REGULATORY PROVISIONS REFERENCED FOR THIS ISSUE:

- 8 U.S.C §§ 1153(b)(5)(A)(i), (C)(i)
- 8 C.F.R, §§ 204.6(f)(1), (j)(2)
- 8 U.S.C. §§ 1153(b)(5)(A)(i), (B)(i), (C)(ii)
- 8 C.F.R. §§ 204,6(1)(2), (i)(2), (i)(6)
- 8 C.F.R. § 204.6(e)
- Matter of Ho, 22 I&N Dec. 206 (Assoc, Comm'r 1998)

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- Matter of Soffici, 22 I&N Dec. at 165 n.3 (interpreting 8 C.F.R § 204.6(e))

C. Capital at Risk

Citing applicable statutory and regulatory provisions, the USCIS states that invested capital must be placed at risk of loss with a chance for return on the capital. Evidence of investment—defined as a contribution of capital—is required in lieu of stated intent to invest. The capital investment cannot be made in exchange for debt.

Based on Matter of Izumi, it must be demonstrated that the capital is at risk for generating return and has been made available to the business responsible for creating jobs.

DEFICIENCY: The original submission did not show that the capital had been made available to the business responsible for creating jobs. USCIS suggested remedial action:

- Organizational, transactional and offering documents
- Any other evidence that overcomes the deficiencies.

STATUTORY AND REGULATORY PROVISIONS REFERENCED FOR THIS ISSUE:

- 8 C.F.R, § 204.6(i)(2)
- 8 C.F.R, § 204.6(e)
- 22 I&N Dec. at 179

D. Invested Capital was Obtained Through Lawful Means

Citing applicable statutory and regulatory provisions, the USCIS states here that if the capital is illegally obtained, you cannot use it. The path that the capital took has to be documented. Evidence of investment must be accompanied by validation that the capital was obtained lawfully.

DEFICIENCY: The path of funds for the investment capital is unclear in the original submission and needs to be presented with additional evidence showing that it was lawfully obtained. The USCIS has suggested providing information such as the following to correct this deficiency:

- Foreign business registration records
- Corporate and/or personal tax returns
- Certified copies of judgments against the Petitioner, if any
- Evidence of any other sources of capital or encumbrances on petitioner's assets
- Evidence of payment of income taxes
- Evidence of property ownership.

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STATUTORY AND REGULATORY PROVISIONS REFERENCED FOR THIS ISSUE:

- 8 C.F.R, § 204.6(i)(3)
- 8 C.F.R, § 204.6(i)(3)(ii)
- 8 C.F.R, § 204.6(e)
- Matter of Ho, 22 I&N Dec. at 210
- Matter of Izummi, 22 I&N Dec. at 195
- 22 I&N Dec. at 179

E. Job Creation

This is the most substantial part of this RFE. Citing applicable statutory and regulatory provisions, the USCIS reiterates that the new commercial enterprise must create ten new permanent full-time positions per investor within two years. The two-year timeline begins six months after the adjudication of the I-526. The job creation can be demonstrated by presenting evidence of current employees or in a comprehensive business plan. Since this is submitted through a regional center, the full-time positions can be created directly or indirectly.

DEFICIENCY: A business plan was submitted by the Petitioner but the USCIS determined that, besides the lack of evidence showing that the business opened at all, there was no evidence that any employees had been hired. Proof that the employees have been or will be hired is required. Citing Matter of Ho, the USCIS elaborates by saying that a comprehensive, Matter of Ho-compliant business plan demonstrating the need for 10 employees per investor in the next two years is also acceptable. While the business plan references the investment to be made, there is no evidence provided to show that funds were actually invested. The business plan does contain a hiring timeline but without any evidence that the business is or will be operational, the assumption cannot be made that the requisite number of employees can be hired. To establish that this is an actual, viable project, the USCIS requests the following types of documentation:

- Permits and Licenses
- Contracts
- Project Status Timeline Showing Milestones and Completion Date
- Sales Projections, Reasonable, Based on Sourced Information for the Target Market and the Industry Arena
- Startup Costs for the Business and the Source of Funding for Those Costs

DEFICIENCY: The path of funds for the investment capital is unclear in the original submission and needs to be presented with additional evidence showing that it was lawfully obtained. To establish that this is an actual, viable project, the USCIS requests the following types of documentation:

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- Foreign business registration records
- Corporate and/or personal tax returns
- Certified copies of judgments against the Petitioner, if any
- Evidence of any other sources of capital or encumbrances on petitioner's assets
- Evidence of payment of income taxes
- Evidence of property ownership

STATUTORY AND REGULATORY PROVISIONS REFERENCED FOR THIS ISSUE:

- 8 C.F.R. § 204.6(i)(4)(i)
- 8 C.F.R. § 204.6(i)(4)(i)(B)
- 8 C.F.R. §§ 204.6(e), (i)(4)(iii), (m)(1),(7)
- 8 U.S.C. § 1153(b)(5)(A)(ii)
- 8 C.F.R. § 204.6(m)(3)
- Matter of Ho, 22 I&N Dec. at 210
- Matter of Izummi, 22 I&N Dec. at 195
- 8 U.S.C. §§ 1153(b)(5)(A)(ii), (B)(i), (C)(ii)

USCIS CONCLUSION

USCIS has determined that the record does not establish eligibility for the benefit sought. Accordingly, USCIS has requested evidence to address the issues outlined above. Petitioner is not precluded, however, from submitting evidence in addition to the evidence requested by USCIS that Petitioner deems relevant to address such issues. Petitioner must prove by a preponderance of the evidence—in other words, that it is more likely than not—that Petitioner is fully qualified for the benefit sought.

If Petitioner submits updated or revised documents, please note that “[a] petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the Petitioner becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to [USCIS] requirements.” Matter of Izummi, 22 I&N Dec, 169, 175 (Assoc. Comm'r 1998); see also 8 C.F.R. § 103.2(b)(1).

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Immigrant Investor Program
131 M Street, NE, MS 2235
Washington, DC 20529



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

TO:

DATE:

Application: Form I-526

A-Number:

File:

REQUEST FOR EVIDENCE

Based upon a review of your petition and supporting documentation, U.S. Citizenship and Immigration Services (USCIS) has found that you have not established that you are eligible for the benefit you are seeking. In order to determine whether you are eligible for the benefit, USCIS requests that you submit additional evidence. The deficiencies in your petition, and the evidence that USCIS is requesting, are explained in the attached document.

See Attachment

If you reside within the United States, you must submit the requested evidence no later than 87 days from the date of this notice. If you reside outside of the United States, you must submit the requested evidence no later than 98 days from the date of this notice. USCIS is unable to grant additional time for responding to this request for evidence. See 8 C.F.R. § 103.2(b)(8)(iv).

You must submit all of the requested materials at one time. Submission of only some of the requested evidence will be considered a request for a decision on the record. See 8 CFR § 103.2(b)(11). If you do not respond by the deadline, USCIS may deny your petition as abandoned, may deny your petition based on the record, or may deny your petition for both reasons. See 8 CFR § 103.2(b)(13)(i).

If you reside inside the United States, your deadline for submitting a response is: **April 19, 2019.**

If you reside outside of United States, your deadline for submitting a response is: **April 30, 2019.**

Keep a photocopy of this notice for your records. If you otherwise write to us about your case, please provide a copy of this notice

You will be notified separately about any other applications or petitions you have filed.

Please send your response to this address:

U.S. Citizenship and Immigration Services
Immigrant Investor Program Office
131 M Street, NE
Mailstop 2235

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REQUEST FOR EVIDENCE

Form I-526, Immigrant Petition by Alien Entrepreneur

I. Procedural History and Commercial Enterprise Background

(Petitioner) filed an Immigrant Petition by Alien Entrepreneur (Form I-526), pursuant to section 203(b)(5) of the Immigration and Nationality Act (INA) on 2016.

Petitioner asserts eligibility based on an investment in a new commercial enterprise pursuant to the Immigrant Investor Program. The Form I-526 and the evidence presented assert that Petitioner invested \$500,000 into NCE Name, the new commercial enterprise (NCE), on 2016. The NCE proposed to pool up to \$3,000,000 from up to 6 immigrant investors. The NCE intends to start a business in Macadam, New Jersey. According to the Form I-526 and supporting evidence, the NCE plans to use the \$3,000,000 as a loan to partially fund the cost of the project. Petitioner asserts that the NCE is principally doing business within a targeted employment area (TEA).

Based upon a review of the initial record of evidence, U.S. Citizenship and Immigration Services (USCIS) concludes that Petitioner has not established eligibility for the benefit sought. To assist Petitioner in addressing the deficiencies in the record, USCIS is issuing this Request for Evidence. The deficiencies of the current record are outlined below.

II. Analysis of the Evidence

A. Evidence that the NCE is Principally Doing Business in a TEA

Generally, an immigrant investor must invest at least \$1,000,000 in capital in a new commercial enterprise that creates not fewer than ten jobs. An exception exists if the immigrant investor invests his or her capital in a new commercial enterprise that is principally doing business in, and creates jobs in, a TEA. In such a case, the immigrant investor must invest a minimum of \$500,000 in capital. 8 U.S.C. § 1153(b)(5)(C)(ii); 8 C.F.R. § 204.6(f)(2). To establish eligibility for the reduced minimum investment threshold of \$500,000, the immigrant investor must invest his or her capital in a new commercial enterprise that is principally doing business in, and creates jobs in, a rural area or an area of high unemployment. 8 U.S.C. § 1153(b)(5)(B)(i)-(ii); 8 C.F.R. § 204.6(j)(6).

Applicable statute and regulations define a TEA as, at the time of investment, a rural area or an area that has experienced unemployment of at least 150 percent of the national average rate. 8 U.S.C. § 1153(b)(5)(B)(ii); 8 C.F.R. § 204.6(e). A "rural area" is defined as any area not within either a metropolitan statistical area (as designated by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States). 8 U.S.C. § 1153(b)(5)(B)(iii); 8 C.F.R. § 204.6(e). In other words, a rural area must be both outside of a metropolitan statistical area and outside of a city or town having a population of 20,000 or more.

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For investments made through regional centers, the term "principally doing business" applies to the job-creating entity, rather than the new commercial enterprise. USCIS Policy Manual, Volume 6, Part G, Chapter 2, Section A(5) (citing 8 C.F.R. § 204.6(j)(6) and *Matter of Izummi*, 22 I&N Dec. 169, 171-73 (Assoc. Comm'r 1998)).

The evidence in the record does not establish that the NCE is principally doing business, and creates jobs, in a TEA. The record contains the following evidence: State of New Jersey, Department of Labor and Workforce Development, Economic & Demographic Research, June 9, 2014, letter designating South River, New Jersey (Middlesex County) as a TEA.

The TEA letter is deficient because Petitioner filed the petition in 2015; consequently, the filing Petitioner filed her petition more than one year after the State of New Jersey issued the TEA designation letter.

To establish that the NCE is principally doing business, and creates jobs, in a TEA, additional evidence is required. Petitioner must submit, as applicable, the following evidence in order to comply with 8 C.F.R. § 204.6(j)(6):

- In the case of a rural area, evidence that the new commercial enterprise is principally doing business within a civil jurisdiction not located within any standard metropolitan statistical area (MSA) as designated by the Office of Management and Budget, or within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States;
- In the case of a high unemployment area:
 - Evidence that the MSA, the specific county within a MSA, 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
 - 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 MSA 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.
- Evidence documenting the location where the NCE is principally doing business – where the NCE regularly, systematically, and continuously provides goods or services that support job creation. Where the NCE provides such goods or services in more than one location, evidence demonstrating the location that is most significantly related to job creation, such as the location of any jobs directly created by the NCE, the location of any expenditure of capital related to job creation, where the NCE conducts its day-to-day operation, and where the NCE maintains its assets utilized for job creation;
- Updated letter valid either at the time of filing or at the time of Petitioner's investment from an authorized body of the government of the state in which the NCE is located which certifies that the geographic or political subdivision of the MSA 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; or
- Any other evidence that overcomes the deficiencies noted above.

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B. Required Amount of Capital

Applicable statutory and regulatory provisions provide that the immigrant investor must generally invest or be actively in the process of investing at least \$1,000,000 of capital in a new commercial enterprise. 8 U.S.C. §§ 1153(b)(5)(A)(i), (C)(i); 8 C.F.R. §§ 204.6(f)(1), (j)(2). Alternatively, an immigrant investor can invest or be actively in the process of investing a reduced amount (\$500,000) of capital if the new commercial enterprise into which the immigrant investor is investing is principally doing business in, and creates jobs in, a TEA. 8 U.S.C. §§ 1153(b)(5)(A)(i), (B)(i), (C)(ii); 8 C.F.R. §§ 204.6(f)(2), (j)(2), (j)(6). In either case, all lawfully-derived capital invested by an immigrant investor shall be valued at present fair market value in United States dollars. 8 C.F.R. § 204.6(e).

"Capital" means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the immigrant investor, provided that the immigrant investor 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. 8 C.F.R. § 204.6(e). Further, a petitioner must show that he or she has placed his or her own capital at risk, i.e., that he or she was the legal owner of the invested capital. *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm'r 1998); see also *Matter of Saffici*, 22 I&N Dec. at 165 n.3 (interpreting 8 C.F.R. § 204.6(e) as requiring that a petitioner establish the funds invested are his or her own).

The record does not establish that the required minimum amount of \$500,000 has been invested or is actively in the process of being invested. Petitioner submitted no evidence to establish that he has invested or is actively in the process of investing the required minimum amount of \$500,000.

In order to establish that the required capital has been invested or that Petitioner is actively in the process of investing the required amount of capital, additional evidence is requested. Petitioner may submit, as applicable, the following in order to comply with 8 C.F.R. § 204.6(j)(2):

- Evidence of all assets which have been purchased for use in the U.S. enterprise, including invoices, sales receipts, and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;
- Evidence of all property transferred from abroad for use in the U.S. enterprise, including U.S. Customs and Border Protection 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 valuation of such property;
- Evidence of monies transferred or committed to be transferred to the NCE in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the NCE to redeem it at the holder's request;
- Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by Petitioner's own assets, other than those of the NCE, and for which Petitioner is personally and primarily liable. Such agreements must detail the loan terms and must be supported by documentation evidencing Petitioner's ownership of the assets securing the loan;

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- Corporate, partnership, or other business entity annual reports and/or audited financial statements/records, where the loan or mortgage agreement involves such business entity;
- Gift instruments documenting gifts to Petitioner; or,
- Any other evidence that overcomes the deficiencies noted above.

C. Capital At Risk

Applicable regulations provide that, in order “[t]o 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.” 8 C.F.R. § 204.6(c)(2). For the capital to be “at risk” there must be a risk of loss and a chance for gain.

To demonstrate that Petitioner has placed such capital at risk for the purpose of generating a return, Petitioner must first present evidence that he or she has made a qualifying investment of the minimum required amount of capital. The regulations define “invest” to mean a contribution of capital. However, the regulations state that 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 and, thus, does not constitute a qualifying investment. 8 C.F.R. § 204.6(e).

1. Capital Made Available to the Business(es) Most Closely Responsible for Job Creation

Matter of Izummi held that, in order for a petitioner to meet the burden of establishing that the investment capital has been placed at risk for the purpose of generating a return, the “full amount of money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based.” 22 I&N Dec. at 179 (emphasis omitted).

The record does not establish that the required minimum amount of capital has been made available to the business(es) most closely responsible for job creation. Petitioner submitted no evidence to establish that the required minimum amount of capital has been made available to the business(es) most closely responsible for job creation.

To establish that the full amount of capital has been made available to the business(es) most closely responsible for job creation, additional evidence is requested. Petitioner may submit, as applicable, the following:

- Organizational, transactional, and offering documents; and,
- Any other evidence that overcomes the deficiencies noted above.

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D Invested Capital was Obtained Through Lawful Means

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6(e). Petitioner must demonstrate by a preponderance of the evidence that the capital was his or her own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); see also *Matter of Ho*, 22 I&N Dec. at 210. To show that the capital was his or her own, Petitioner must document the path of the funds. *Matter of Izumi*, 22 I&N Dec. at 195.

The record does not establish that the capital which has been invested by Petitioner or which Petitioner is actively in the process of investing is capital that has been obtained through lawful means. Petitioner submitted no evidence to demonstrate that the capital that he has invested or is actively investing is capital that has been obtained through lawful means.

USCIS must be able to determine that it is more likely than not that the capital which has been invested by Petitioner or which Petitioner is actively in the process of investing is capital obtained through lawful means. Accordingly, USCIS requests additional evidence to establish the lawful source of the EB-5 investment. Petitioner must submit, as applicable, the following evidence in order to comply with 8 C.F.R. § 204.6(j)(3):

- Foreign business registration records;
- Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in the subpart described in 8 C.F.R. § 204.6(j)(3)(ii)), 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 Petitioner;
- 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 Petitioner from any court in or outside the United States within the past fifteen years; or
- Evidence identifying any other source(s) of capital, such as
 - Corporate, partnership, or other business entity annual reports and/or audited financial statements/records;
 - Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by Petitioner's own assets, other than those of the NCE, and for which Petitioner is personally and primarily liable;
 - Evidence of income such as earnings statements or official correspondence from current or prior employer(s) stating when Petitioner worked for the company and how much income Petitioner received during employment;
 - Gift instrument(s) documenting gifts to Petitioner;

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- Evidence, other than tax returns required under 8 C.F.R. § 204.6(j)(3)(ii), of payment of individual income tax, such as an individual income tax report or payment certificate, on the following:
 - Wages and salaries;
 - Any income from labor and service or business activities;
 - Any income/royalties from published books, articles, photographs, etc.;
 - Any royalties/income from patents or special rights;
 - Interest, dividends and bonuses;
 - Any rental income;
 - Any proceeds from property transfers;
 - Any incidental income; and/or
 - Other taxable income determined by the relevant financial department.
- Evidence of property ownership, including property purchase and/or sale documentation; or,
- Any other evidence that overcomes the deficiencies noted above.

E. Job Creation

As required by 8 C.F.R. § 204.6(j)(4)(i), the petition must establish that the investment of the required amount of capital in a new commercial enterprise will create full-time positions for at least ten qualifying employees within 2 years. See also 8 U.S.C. § 1153(b)(5)(A)(ii). For purposes of the Form I-526 adjudication and the job creation requirements, the two-year period described in 8 C.F.R. § 204.6(j)(4)(i)(B) is deemed to commence six months after the adjudication of the Form I-526.

According to 8 C.F.R. § 204.6(j)(4)(i), to show that a new commercial enterprise will create full-time positions for at least ten qualifying employees within two years, the petition must be accompanied by:

(A) Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for 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 NCE, the need for at least 10 qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

For a new commercial enterprise within a regional center, the full-time positions can be created either directly or indirectly by the new commercial enterprise. 8 C.F.R. §§ 204.6(e), (j)(4)(iii). Investors investing in a regional center

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are subject to all the same program requirements except that they may rely on indirect job creation as demonstrated through reasonable methodologies, including those set forth in 8 C.F.R. § 204.6(m)(3), 8 C.F.R. §§ 204.6(j)(4)(iii), (m)(1), (7).

1. Evidence of Job Creation

The evidence in the record does not establish that the NCE will create at least 10 full-time positions for qualifying employees. The record contains the following evidence: A January 2015 business plan.

The business plan lists the number and types of employees that the NCE proposes to hire as well as a list of job descriptions. Additionally, Petitioner's attorney asserted that the NCE opened in September. There are no documents in the record showing that the NCE opened in 2015. Petitioner has, furthermore, provided no evidence to show that the NCE has hired any employees.

The business plan contains a project hiring timeline. The timeline does not provide information about the hiring timeline; instead, the timeline provides projected completion dates for: "File I-526; I-526 approval; adjustment of status; conditional residence period; hiring complete; and, I-829s filed."

Consequently, the evidence in the record does not establish that the NCE will create at least 10 full-time positions for qualifying employees. Petitioner must, therefore, submit additional evidence that the NCE will create at least 10 full-time positions for qualifying employees per investor. Petitioner must submit, as applicable, the following:

- Evidence demonstrating that the business has opened;
- Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for 60 full-time, qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; and,
- Any other evidence that overcomes the deficiencies noted above.

2. Comprehensive Business Plan

A petition is not required to demonstrate that 10 full-time positions for qualifying employees have already been created by the commercial enterprise. However, where the jobs have not already been created, the petition must include a comprehensive business plan demonstrating the need for at least 10 employees within the next two years. *Matter of Ho* explained that a comprehensive business plan must be sufficiently detailed to permit USCIS to draw reasonable inferences about job-creation potential. 22 I&N Dec. at 213. Additionally, *Matter of Ho* held that a "comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives." *Id.* The decision further states:

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

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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.¹ Most importantly, the business plan must be credible.

Id.

The record contains the following evidence: A January 2015 business plan.

Upon reviewing the business plan, USCIS finds that the evidence in the record does not establish that the business plan is *Matter of Ho* compliant.

The business plan describes the capital stack and uses of the project funds:

- Capital Stack
 - \$3,000,000 – EB-5 loan
 - \$2,000,000 – Equity
 - \$3,000,000 – Total sources

- Uses
 - \$2,000,000 – Building acquisition
 - \$1,500,000 – Renovation cost
 - \$1,000,000 – F&F
 - \$ 500,000 – Pre-opening costs
 - \$5,000,000 – Total uses

Petitioner provided no evidence to demonstrate that the NCE has established an agreement with any EB-5 investors for the \$3,000,000 EB-5 loan. Furthermore, there is no evidence to show that the NCE has received a \$3,000,000 loan. Petitioner did not explain the source of the \$2,000,000 equity. Petitioner provided no evidence that the NCE acquired and renovated the building, purchased any F&F, and incurred any pre-opening costs.

¹ USCIS recognizes that each business is different and will require different information in its business plan. These guidelines, therefore, are not all-inclusive.

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The business plan lists the number and types of employees that the NCE proposes to hire as well as a list of job descriptions. Petitioner provided no evidence to show that the NCE has hired any employees.

The business plan contains a project hiring timeline. The timeline does not provide information about the hiring timeline; instead, the timeline provides projected completion dates for: "File I-526; I-526 approval; adjustment of status; conditional residence period; hiring complete; and, I-829s filed."

USCIS must be able to determine that it is more likely than not that the business plan is comprehensive and credible. Accordingly, USCIS requests additional evidence to establish the business plan is both comprehensive and credible. Such evidence may include, but is not limited to:

- **Permits and Licenses**

- Provide evidence that the appropriate permits and licenses have been obtained in order to begin work on the project. If providing the permits would require the submission of scores, hundreds, or thousands of pages of documents, then just provide a letter from the appropriate city, county, state, or federal agency that confirms the permits have been issued.
- Provide evidence that all necessary building permits have been obtained including any Environmental Protection Agency permits necessary to immediately begin construction.
- Provide water, sewage, waste water, and Health Department permits.
- Provide permits, licensing, or certifications that the NCE has obtained in order to conduct business.

- **Contracts**

- General: Provide evidence of any agreements executed to provide marketing, goods, or services for the job creating entity.
- Acquisition: Provide evidence that the NCE has purchased the property
- Supply: Provide evidence of any contracts executed for the supply of materials or services, including contracts for renovation.
- Distribution: Provide evidence of any contracts for the distribution of products or services.

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- If yes, indicate the total number of employees (i) prior to obtaining the bridge loan or other interim financing and (ii) prior to replacing the bridge loan or other interim financing with the EB-5 funds.
- Goals: Provide a timetable of actual dates or projected milestones for implementation of project goals (e.g., acquisition of permits, buildings, etc.), as well as the ultimate completion of the project
- Sales: Provide sales projections for the NCE.
 - Submit details regarding the sources and/or derivation of the input data being used and the methodological steps taken so that USCIS can determine by a preponderance of the evidence that they are derived from reliable sources using reasonable assumptions.
- Costs: Provide cost projections for the NCE:
 - Include costs of permits, reports and design fees, developer fees, finance fees, construction loan interest fees, and any other costs or fees for each project;
 - Indicate where the money for these fees would come from
- Income: Provide income projections for the NCE; or,
- Any other evidence that overcomes the deficiencies noted above.

III. Conclusion

USCIS has determined that the record does not establish eligibility for the benefit sought. Accordingly, USCIS has requested evidence to address the issues outlined above. Petitioner is not precluded, however, from submitting evidence in addition to the evidence requested by USCIS that Petitioner deems relevant to address such issues. Petitioner must prove by a preponderance of the evidence – in other words, that it is more likely than not – that Petitioner is fully qualified for the benefit sought.

If Petitioner submits updated or revised documents, please note that “[a] petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See *Matter of Kastgbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to [USCIS] requirements.” *Matter of Izumi*, 22 I&N Dec. 169, 175 (Assoc. Comm’r 1998); see also 8 C.F.R. § 103.2(b)(1).

NOTES:

Any document submitted to USCIS containing a foreign language must be accompanied by a full English language translation that has been certified by the translator as complete and accurate, and that the translator is competent to translate from the foreign language into English. Submit clear and legible copies of all requested evidence. If

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clear and legible copies are not possible, submit the original documents. These originals will be returned, if requested.

Please provide an index of any submitted evidence and include corresponding tabs for each section of evidence.