

THE ROLE OF THE BUSINESS PLAN WRITER IN THE REGIONAL CENTER CONTEXT

By Joseph P. Whalen (August 16, 2012)

Folks have different views of the significance of the EB-5 Business Plan as well as the duties and functions of the writer of that Plan. More than one approach is valid. This brief essay will discuss one of them. This is just one man's view and is subject to change.

I see the Business Plan (BP) as a foundational document. It encompasses the key aspects underlying the “*kind(s) of commercial enterprise(s) that will receive capital from aliens*” as per §610(a) (Appropriations Act of 1993) [8 USC § 1153 Note]. As discussed previously in a separate essay¹, such BP might be either an archetype BP used in the request for designation as a Regional Center (RC), or it may be a *Matter of Ho*²-compliant BP for a *Specific Project*.

Regardless of variety and purpose, any decent BP will be based on an accepted industry standard. This means that certain parameters or data sets and/or categories³ will be used to construct the BP. In other words, most BPs may be based on a common outline or series of headings that help to organize the major components that are used in most BPs. While there are common structural components for a basic BP, there is not likely to ever be an across-the-board, fill-in-the-blank, “cookie-cutter” template for general use in EB-5 or anywhere else. This means that the Regional Centers need to hire a professional technical writer who can craft *Matter of Ho*-compliant BPs. All RC investors and MOST stand-alone investors will eventually need a compliant BP. Here is what *Matter of Ho* has to say about the necessary part of the plan:

“.....To be “comprehensive,” a business plan must be sufficiently detailed to permit the Service to draw reasonable inferences about the job-creation potential. Mere conclusory assertions do not enable the Service to determine whether the job-creation projections are any more reliable than hopeful speculation.

A **comprehensive** business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products

¹ <http://www.slideshare.net/BigJoe5/taking-on-the-eb5-communitys-confusion-about-exemplars>

² *Matter of Ho*, 22 I&N Dec.206 (AAO 1998)

³ **Different industries require different resources.** Do you need corn for ethanol or iron ore for smelting and shipbuilding, or plastic parts pressed in China to be assembled in a Tennessee *toy* and other “junk-brand” products (*plastic utensils, cups, and plates*) assembly plant?

and/or services, and its objectives. 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.^{FN4} Most importantly, the business plan must be credible.

Certainly no astute investor would place half a million or a million dollars into a business that he had not thoroughly researched. Creating a comprehensive business plan as described above is normal practice for any businessman seeking to operate a viable business." *Ho at 213*.

^{FN4} The Service recognizes that each business is different and will require different information in its business plan. These guidelines, therefore, are not all-inclusive.

Most have seen the above excerpt before but have you ever dissected it? Let's do just that. In order to comply with *Matter of Ho*, and keeping in mind the *proviso* of footnote 4, the BP writer's challenge is as follows. Produce a BP that accomplishes as much of the following as is feasible and as is necessary but which is precisely tailored to the *type of project*⁴ contemplated within the desired industry category sought or already approved for the Regional Center and sourced to the defined geographic area encompassed by the Regional Center.

1. The RC, your own economist, and USCIS will all need to be able to draw "reasonable inferences" from the BP about the job-creation potential.
2. A **comprehensive** business plan as contemplated by the regulations should contain, at a minimum:
 - a. a description of the business,
 - b. its products and/or services, and
 - c. its objectives.
3. The plan should contain:

⁴ "Kind of commercial enterprise that will receive capital from aliens" seeking EB-5 visas.

- a. a market analysis, including:
 - i. the names of competing businesses and
 - ii. their relative strengths and weaknesses,
 - b. a comparison of the competition's:
 - i. products and
 - ii. pricing structures, and
 - c. a description of the target market/prospective customers.
4. The plan should list:
 - a. The required permits and licenses obtained.
 - b. If applicable, it should describe:
 - i. the manufacturing or production process,
 - ii. the materials required, and
 - iii. the supply sources.
5. The plan should detail any contracts executed for:
 - a. The supply of materials and/or
 - b. the distribution of products.
6. It should discuss the
 - a. marketing strategy of the business,
 - b. including
 - i. pricing,
 - ii. advertising, and
 - iii. servicing.
7. The plan should set forth the business's:
 - a. organizational structure and
 - b. its personnel's experience.
8. It should explain the business's:
 - a. staffing requirements and
 - b. contain a timetable for hiring, as well as
 - c. job descriptions for all positions.
9. It should contain:
 - a. sales,
 - b. cost, and
 - c. income projections, and
 - i. detail the bases therefor.
10. Most importantly, the business plan must be credible.

Wow! That is a tall order. However, by approaching it systematically and incrementally, you will find that it is not insurmountable after all. Good Luck!