

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 08 2015** Office: IMMIGRANT INVESTOR PROGRAM FILE: [REDACTED]

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Chief, Immigrant Investor Program (IPO), denied the preference visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an immigrant investor pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5). The petitioner's investment is through a U.S. Citizenship and Immigration Services (USCIS) designated regional center pursuant to section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), as amended by section 116 of Pub. L. No. 105-119, 111 Stat. 2440 (1997); section 402 of Pub. L. No. 106-396, 114 Stat. 1637 (2000); section 11037 of Pub. L. No. 107-273, 116 Stat. 1758 (2002); section 4 of Pub. L. No. 108-156, 117 Stat. 1944 (2003); and section 1 of Pub. L. No. 112-176, 126 Stat. 1325 (2012). USCIS initially designated [REDACTED] as a regional center on June 23, 2009, and subsequently approved amendments on January 20, 2011, July 25, 2011, and July 30, 2013. The petitioner's investment is through [REDACTED] and its affiliated limited company, [REDACTED], a new commercial enterprise (NCE). The NCE is 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 \$500,000. The Business Plan, page 2, states that the NCE would use the investment funds to construct a new headquarters and parking facility for [REDACTED] to make renovations to the existing [REDACTED] headquarters, and to develop a business park.

The chief determined that the petitioner did not demonstrate the lawful source of her invested funds. On appeal, the petitioner submits additional documentary evidence and asserts that the discrepancies are immaterial or nonexistent. For the reasons discussed below, the petitioner has not overcome the chief's grounds for denial.

I. LAW

Section 203(b)(5)(A) of the Act, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in an NCE:

- (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).

II. PROCEDURAL AND FACTUAL BACKGROUND

On July 17, 2012, the petitioner filed Form I-526, Immigrant Petition by Alien Entrepreneur, along with supporting documentation. On November 27, 2013, the petitioner responded to a November 18, 2013, electronic mail request for additional evidence (RFE), and on March 5, 2014, the petitioner responded to a December 5, 2013, regular mail RFE. On November 3, 2014, the chief denied the petition, determining that the petitioner did not demonstrate that her invested capital was obtained through lawful means. On November 21, 2014, the petitioner filed an appeal with a brief and submitted additional documentation regarding the lawful source of her funds.

III. ISSUES ON APPEAL

The regulation at 8 C.F.R. § 204.6(j)(3) lists the type of evidence a petitioner must submit, as applicable, including foreign business registration records, business or personal tax returns, or evidence of other sources of capital.

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. 206, 210-211 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). Without documentation of the path of the funds, the petitioner cannot meet [her] burden of establishing that the funds are [her] own funds. *Id.*

At the initial filing of the petition, the petitioner indicated in her cover letter that the source of her invested capital was the income of her husband, [REDACTED] who is employed by the [REDACTED]. In addition, the petitioner submitted summary translations of Mr. [REDACTED] checking account statements from January 5, 2009 to May 15, 2012. The regulation at 8 C.F.R. § 103.2(b) requires that “[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation” As the petitioner did not comply with the regulation, the chief issued an electronic RFE and requested the petitioner to submit full English language translations of Mr. [REDACTED] bank statements. In response, the petitioner submitted new translations. The chief reviewed the bank statements and determined that there were two mathematical discrepancies:

1. On Page 16 of Mr. [REDACTED] bank statement, the account reflected a balance of 39,464.10 CNY on December 27, 2011. On December 28, 2011, a deposit of 16,500 CNY reflected the account balance as 204,464.10 CNY. The deposit of 16,500 CNY should have increased the balance to 55,964.10 CNY rather than 204,464.10 CNY;
2. On Page 16 of Mr. [REDACTED] bank statement, the account reflected that on December 29, 2011, there was a 300,000 CNY deposit that increased the balance to 304,464.10 CNY. On the same day, there was a 3,902,400 CNY account transfer transaction that should have resulted in a -3,597,935.90 balance; however the bank statement reflected a -

2064.10 balance.¹ Regardless, there was no evidence explaining how Mr. [REDACTED] was able to transfer funds with a negative balance.

In addition, the chief indicated that there were several deposits from ‘[REDACTED]’ and the source of these deposits were not disclosed or explained as the petitioner asserted that the source of her investment was derived from Mr. [REDACTED] income. In response, the petitioner submitted a declaration from the translator who indicated that she made a mistake by omitting one digit, and the December 28, 2011, deposit should have been 165,000 CNY rather than 16,500 CNY. The petitioner submitted a revised Page 16 of Mr. [REDACTED] statement reflecting the corrected 165,000 CNY deposit.

Furthermore, the petitioner submitted a February 18, 2014, letter from [REDACTED], who stated that ‘[REDACTED]’ is a financial product offered to [REDACTED] customers that is linked to a checking account and can be withdrawn. Mr. [REDACTED] further stated that once a checking account that is linked to a ‘[REDACTED]’ account exceeds 2000 CNY, the banking system automatically transfers funds that are over 2000 CNY from the checking account to the ‘[REDACTED]’ account. In addition, [REDACTED] customers may overdraw their checking accounts on the condition that the overdraft does not exceed the total principal amount in the same currency of all wealth management accounts, and if a customer does not pay back the full amount by the end of the day, then the system automatically transfers the deficit amount from the financial products account to the checking account to cover the negative checking balance.

Mr. [REDACTED] also stated that upon reviewing Mr. [REDACTED] December 29, 2011 transactions for his checking and “[REDACTED]” accounts, it was discovered that there were two transactions that occurred in the ‘[REDACTED]’ account that were omitted in his checking account: a ‘[REDACTED]’ to checking account transaction for -3,595,871.80 CNY; and a “[REDACTED]” to checking account transaction for -4,128.20 CNY. Therefore, on December 29, 2011, Mr. [REDACTED] checking account had four balances: 304,464.10 CNY; 3,900,335.90 CNY, -2,064.10 CNY, and 2064.10 CNY. Moreover, Mr. [REDACTED] indicated that Mr. [REDACTED] checking account sometimes shows a negative balance because the overdraft has never exceeded the balance amount of his ‘[REDACTED]’ account, and the overdraft would be automatically covered by the end of the day from the “[REDACTED]” account. The petitioner also submitted screenshots from [REDACTED] website and bank statements for Mr. [REDACTED] “[REDACTED]” account for January 6, 2011 to December 31, 2011.

In the chief’s decision denying the petition, he determined that the petitioner did not demonstrate the path of funds to Mr. [REDACTED] checking account. Specifically, although the petitioner submitted Mr. [REDACTED] checking account statements reflecting a detailed transaction list from January 5, 2009 to May 15, 2012, and his [REDACTED] statement from January 6, 2011 to December 31, 2011, the petitioner did not submit Mr. [REDACTED] statements prior to January 6, 2011.

¹ The chief indicated in his RFE that the difference between 304,464.10 CNY and 3,902,400 is -85,935.90 CNY. The correct difference is - 3,597,935.90 CNY.

In addition, the chief found Mr. [REDACTED] letter to be insufficient because it did not explain why [REDACTED] did not record the December 29, 2011, checking account transactions when it recorded the December 29, 2011, [REDACTED] account transactions. Moreover, although Mr. [REDACTED] indicated that the bank system will automatically transfer the necessary amount from the [REDACTED] account to the checking account to maintain the checking account with a balance of at least 2,000 CNY if the checking account is over-drafted the same day, Mr. [REDACTED] checking account did not reflect a negative balance until after he transferred 3,902,400 CNY; the checking account had an immediate prior balance of 304,464.10 CNY. The petitioner did not explain why the bank system would automatically transfer funds from the [REDACTED] account to the checking account when the account was not over-drafted.

Further, the chief indicated several discrepancies in [REDACTED] documents. Specifically, the letterhead on Mr. [REDACTED] letter did not match the letterhead that was submitted to verify Mr. [REDACTED] employment and salary income at the initial filing of the petition. The chief indicated that Mr. [REDACTED] letter appears to have taken the logo from [REDACTED] website and transposed it to the letterhead. In addition, the chief found that Mr. [REDACTED] statements appeared to be in a different format than Mr. [REDACTED] checking account statements. Although the [REDACTED] account statements were printed from the same bank system, the checking account statements and [REDACTED] account statements differed in font type, font size, and structure. Moreover, the last page of Mr. [REDACTED] account statement, which contains the December 29, 2011, transactions, differed from the first three pages in font type and size, and the margins did not align with the rest of the document. Finally, the chief stated that Mr. [REDACTED] checking account statements reflected that they were printed on May 18, 2012; however the seal from [REDACTED] was dated May 15, 2012, three days before the statements were printed. For these reasons, the chief questioned the authenticity of the documents and determined that the petitioner did not demonstrate that her investment was derived from a lawful source of funds.

On appeal, the petitioner asserts that the chief “focused on purported irregularities in the bank documents and failed to give proper weight to undisputed evidence that Mr. [REDACTED] has been a high-level banking executive since 2002 with significant income to make the capital investment.” The petitioner submits several documents regarding Mr. [REDACTED] employment with [REDACTED]. The chief’s decision does not question Mr. [REDACTED] employment or his ability to earn enough income to transfer the funds to the petitioner in order for her to make the capital investment; rather the record contains several inconsistencies that were material to establishing the lawful source of the petitioner’s investment capital pursuant to the regulation at 8 C.F.R. § 204.6(j). The petitioner’s documentation had missing transactions and had unsettled inconsistencies that did not establish the lawful path of funds. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent, objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner asserts on appeal that Mr. [REDACTED] letter was competent and objective evidence because it explained the missing transactions in the bank statements and verified the authenticity of Mr. [REDACTED] transactions. As discussed above, the chief thoroughly addressed Mr. [REDACTED] letter

and found that it did not resolve the second mathematical discrepancy. In fact, because the letter made new assertions regarding the missing transactions, the chief found additional inconsistencies.

Mr. [REDACTED] did not explain why [REDACTED] did not record the December 29, 2011, checking account transactions when it recorded the December 29, 2011, [REDACTED] account transactions. Mr. [REDACTED] letter did not provide any reasonable explanation for the omissions, and the petitioner did not submit any documentation from [REDACTED] such as corrected bank statements, rectifying this issue.

Moreover, regarding the 3,595,871.10 CNY transaction from Mr. [REDACTED] account to his checking account, the petitioner submitted a declaration from Mr. [REDACTED] who asserted that on December 29, 2011, he requested the bank to make two transactions from his [REDACTED] account to his checking account. The petitioner did not submit any documentation from [REDACTED] supporting his assertions. There is no evidence indicating that the 3,595,871.10 CNY transaction was initiated by Mr. [REDACTED] or was automatically transferred from Mr. [REDACTED] account.

In addition, on appeal, the petitioner did not submit all of Mr. [REDACTED] account statements since the opening of his account on October 17, 2009. Even though the petitioner asserts on appeal that “[t]he majority of [Mr. [REDACTED] checking account] funds were transferred from his financial investment account, [REDACTED]” the petitioner has not documented the path of funds as she has not submitted all of Mr. [REDACTED] account statements. Without documentation of the path of the funds, the petitioner cannot meet [her] burden of establishing that the funds are [her] own funds. *Matter of Izummi*, 22 I&N Dec. at 195.

Regarding the chief’s concerns as to [REDACTED] letterhead, the petitioner asserts that [REDACTED] is a large corporation with over 50,000 employees and “there is no single uniform letterhead standardized between departments for any specific time period.” The petitioner did not submit any documentation to support her claims regarding letterhead usage at [REDACTED]. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). The petitioner also submits four samples of letterheads asserting them to be from [REDACTED] and stating that these are examples of a “lack of letterhead uniformity.” The petitioner, however, did not submit any documentation from [REDACTED] confirming that the sample letterheads are, in fact, used by [REDACTED]. In addition, the petitioner did not submit any documentation from [REDACTED] confirming that the letterhead on Mr. [REDACTED] letter is official [REDACTED] letterhead or that the contents in Mr. [REDACTED] letter are true and accurate. *Id.*

Regarding the chief’s concerns as to the discrepancies between the format of Mr. [REDACTED] account statements and the format of his checking account statements, the petitioner asserts that “many Chinese banks have a different practice and policy in issuing bank statements” and “it is not uncommon for generated bank statements to sometimes contain errors or variances.” The petitioner’s claims, however, do not address why the last page of Mr. [REDACTED] account statement, which contains the December 29, 2011 transactions, differ from

the first three pages in font type and size, and the margins did not align with the rest of the document. On appeal, the petitioner did not submit any documentary evidence from [REDACTED] confirming the authenticity of the [REDACTED] statements.

Concerning the checking account statements having a seal three days prior to its printing, Mr. [REDACTED] declaration asserts that he “did not pay any attention to the date of the stamp before [he] sent them to our attorney” and “[he] did not alter or modify the bank statements from my bank in any way.” The petitioner offers no reasonable explanation as to why [REDACTED] seal was dated three days before the statements were printed. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent, objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, the petitioner has not overcome the grounds for the chief's denial, and the petitioner has not established that she has invested capital obtained through lawful means pursuant to the regulation at 8 C.F.R. § 204.6(j).

Beyond the director's decision, the petitioner has not demonstrated the complete path of her funds. We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). At the initial filing of the petition, the petitioner submitted declarations from [REDACTED] and herself asserting that Mr. [REDACTED] helped her transfer \$535,000. Specifically, they asserted that on March 6, 2012, the petitioner transferred 3,812,400 CNY in three transactions from her [REDACTED] account [REDACTED] to Mr. [REDACTED] China Industrial and [REDACTED] account * [REDACTED]. They further asserted that on the same day, Mr. [REDACTED] transferred \$600,000 from his [REDACTED] account * [REDACTED] to the petitioner's [REDACTED] account * [REDACTED].

Although the petitioner submitted her [REDACTED] account [REDACTED] statement reflecting a March 6, 2012, “withdrawal over the counter” transaction for 900,000 CNY; a March 6, 2012, “customer fund transfer” for 612,400 CNY; and a March 6, 2012 “customer fund transfer” for 2,300,000 CNY, there is no evidence of these funds being transferred to Mr. [REDACTED]. In addition, there is no documentary evidence to support the assertions regarding the transfer of funds from the petitioner's CMB account [REDACTED] to Mr. [REDACTED] account * [REDACTED]; the transfer of funds from Mr. [REDACTED] account * [REDACTED] to his [REDACTED] account [REDACTED]; and the transfer of funds from Mr. [REDACTED] account [REDACTED] to the petitioner's [REDACTED] account * [REDACTED].

Accordingly, the petitioner has not demonstrated the complete path of her invested capital. Without documentation of the path of the funds, the petitioner cannot meet [her] burden of establishing that the funds are [her] own funds. *Matter of Izummi*, 22 I&N Dec. at 195.

IV. SUMMARY

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.