

(b)(6)



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

DATE: **JUN 24 2014** OFFICE: IMMIGRATION 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Chief, Immigrant Investor Program Office (IPO), denied the preference visa petition and reaffirmed that decision on motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment creation alien pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5). The petition is based on an investment in [REDACTED] the new commercial enterprise (NCE). The limited partnership is located within a United States Citizenship and Immigration Services (USCIS) designated regional center, [REDACTED] pursuant to section 610(c) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, 106 Stat. 1874 (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).

According to the NCE's August 2012 business plan, the NCE's general partner, [REDACTED] is involved in a multi-phase commercial center project, known as [REDACTED] located in [REDACTED]. The cover page of the NCE's business plan indicates that the project is located at [REDACTED]. Page 1 of the business plan provides that the NCE, which is involved in [REDACTED] of [REDACTED] "will add 21 new rooms to [a] hotel, 17,950 square feet of restaurant and rooftop bar space, approximately 4,000 square feet of retail space and 90 additional spaces to [a] parking structure." Page 2 of the business plan provides that the NCE "seeks to raise investment capital of up to \$13 million . . . [to] be used to provide capital for construction costs and for operational expenses of the [REDACTED] hotel addition." A November 23, 2012 document entitled "Schedule A," which the petitioner initially submitted in support of the petition, indicates that the petitioner is one of the NCE's seven limited partners, each owning 3.8462 percent of the NCE. The petitioner indicated on part 2 of the petition that the NCE is located in a targeted employment area, for which the required amount of capital is \$500,000.

In his November 12, 2013 decision, the chief reaffirmed the denial of the petition, finding that the petitioner (1) failed to demonstrate she had made or was in the process of making an investment of personal qualifying capital; and (2) failed to document the lawful source of the required amount of capital. For the reasons discussed below, the petitioner has not overcome either of the chief's grounds for denial. Accordingly, the petitioner's appeal will be dismissed.

I. THE 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 a new commercial enterprise:

¹ The regional center approval letter refers to the regional center as [REDACTED]. The operating agreement for this entity states that the name is [REDACTED]. This decision will use the company name as it appears in California State records, [REDACTED].

- (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).

I. PROCEDURAL AND FACTUAL BACKGROUND

The petitioner filed the petition on December 6, 2012, supported by the following evidence: (1) documents relating to [REDACTED] and the NCE; (2) [REDACTED] February 22, 2012 business plan; (3) the NCE's August 2012 business plan; (4) [REDACTED] September 16, 2012 economic impact report; (5) a May 16, 2012 letter from California's Business, Transportation and Housing Agency, relating to the designation of a targeted employment area; (6) documents relating to the source of the petitioner's investment capital; (7) an October 29, 2012 Loan Agreement between the petitioner and her ex-husband, [REDACTED] (8) documents relating to Mr. [REDACTED] sale of real properties and income; and (9) the petitioner and Mr. [REDACTED] bank statements.

On June 14, 2013, the Director, California Service Center, issued a Request for Evidence (RFE), requesting the petitioner to provide evidence of the lawful source of the petitioner's funds and evidence relating the NCE's employment creation. On August 30, 2013, the petitioner responded to the RFE with the following evidence: (1) a July 31, 2013 [REDACTED] market analysis; (2) an undated construction contract relating to a property located at [REDACTED] and (3) an undated report on hotels and restaurants.

In his September 30, 2013 decision, the chief concluded (1) that the petitioner failed to establish an investment of personal qualifying capital because her funds came from a \$550,000 unsecured loan, and (2) that the petitioner failed to establish the lawful source of funds she invested in the NCE.

On November 12, 2013, the chief granted the petitioner's motion to reopen and motion to reconsider. Specifically, the chief considered an incomplete copy of *Major Laws of the Republic of China on Taiwan*, which the petitioner submitted on motion. The chief again denied the petition on the same two grounds as stated in his September 30, 2013 decision.

On appeal, the petitioner challenges the chief's decision on three bases. First, the petitioner asserts that the funds she invested in the NCE constituted personal qualifying capital because, under Taiwan law, the funds the petitioner received from Mr. [REDACTED] pursuant to an unsecured loan agreement was a "loan for consumption [sic]" and that "the ownership of the funds loaned did

transfer to [the] petitioner.” (Emphasis in original.) Second, the petitioner asserts that the chief miscalculated the value in U.S. dollars of the funds Mr. [REDACTED] received from the sale of his real properties. Finally, the petitioner asserts that the chief’s request of [REDACTED] documents was improper because the bank was an “Intermediary Bank,” serving as a pass-through bank in the November 2012 transactions.

II. ISSUES ON APPEAL

A. Insufficiently Certified Translations

The regulation at 8 C.F.R. § 103.2(b)(3) provides:

Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.

The record contains numerous foreign language documents, including documents relating to Mr. [REDACTED] land ownership and sale of properties. The petitioner has not shown that the foreign language documents have been properly translated pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). Specifically, the English translations the petitioner submitted fail to contain a certification from the translator certifying that he or she is competent to translate the documents from the foreign language into English. Instead, the English translations include a [REDACTED] letterhead and a stamp, certifying “this translation is a true and correct English version of the attached original to the best of [the translator’s] knowledge and belief.” The letterhead and the stamp fail to meet the plain language requirements of 8 C.F.R. § 103.2(b)(3).

Similarly, the petitioner served as the translator for at least one foreign language document, namely, the Agreement of Divorce. The petitioner included the following statement in the translation, “I hereby certify that this translation is true and correct English version of the attached original to the best of my knowledge and belief.” This certification does not include information on whether the petitioner is competent to translate the document. As such, the petitioner’s statement fails to meet the plain language requirements of 8 C.F.R. § 103.2(b)(3).

Accordingly, none of the petitioner’s foreign language documents have any evidentiary weight and will not be considered, because none of them have been translated in accordance with the plain language requirements of 8 C.F.R. § 103.2(b)(3).

B. Capital Investment

The regulation at 8 C.F.R. § 204.6(e) defines “capital” and “investment” and 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.

...

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.

The definition of capital expressly excludes unsecured indebtedness. On appeal, the petitioner asserts that her investment of the loan proceeds she obtained from Mr. [REDACTED] constituted her investment of cash, instead of indebtedness, in the NCE. The petitioner submitted an incomplete copy of *Major Laws of the Republic of China on Taiwan* on motion and on appeal in support of her position. The evidence in the record, however, does not support the petitioner’s position. Specifically, according to *Major Laws of the Republic of China on Taiwan*, a “loan for consumption” is “a contract whereby the parties agree that one of them shall transfer to the other party the ownership of money . . . and the latter shall return things of the same kind, quality and quantity.” Under the October 29, 2012 Loan Agreement, Mr. [REDACTED] made a no-interest, unsecured loan of \$550,000 to the petitioner and the petitioner was to “pa[y] back to [Mr. [REDACTED] at the time and in the amount of the funds returned to [her] at the conclusion of her investment contracted with the invested project.” Although there is a repayment agreement, there is no indication in the loan agreement or in other evidence in the record showing that the petitioner will “return [to Mr. [REDACTED] things of the same kind, quality and quantity.” Rather, she will return whatever amount she receives from the NCE when she withdraws from the partnership. As such, based on evidence the petitioner submitted, the October 29, 2012 unsecured loan between Mr. [REDACTED] and her did not constitute a “loan for consumption” and the loan proceeds that she invested in the NCE did not constitute an investment of cash. Rather, the loan proceeds constituted unsecured indebtedness and the loan agreement transfers all risk to Mr. [REDACTED]

On appeal, the petitioner also asserts, “in practical terms, this [loan] transaction was intended as a gift and would have been documented as a gift except that a ‘gift’ would have incurred gift tax under the laws in Taiwan where the transaction took place, and a ‘loan’ did not.” The petitioner has not supported her statement with any evidence in the record. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm’r 1998) (citing *Matter of*

Treasure Craft of California, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). In fact, the evidence in the record, including the October 29, 2012 Loan Agreement, indicates that the transaction between the petitioner and Mr. [REDACTED] constituted a loan, specifically, an unsecured loan, not a gift. At issue is the plain language of the agreement the petitioner and Mr. [REDACTED] executed, and not subsequent statements about that agreement. See *Matter of Izummi*, 22 I&N Dec. 169, 185 (Assoc. Comm'r 1998).

The investment of cash obtained as a loan from a third party, in this case, from Mr. [REDACTED] is not simply an investment of cash that need not be examined further. *Matter of Soffici*, 22 I&N Dec. at 162, provides in pertinent part:

Even if it were assumed, arguendo, that the petitioner and [the new commercial enterprise] were the same legal entity for purposes of this proceeding, indebtedness that is secured by assets of the enterprise is specifically precluded from the definition of "capital."

Id. Thus, the precedent exists for examining third-party loans as contributions of indebtedness, not cash.

The petitioner asserts that whether (and by logical extension how) the loan was secured is irrelevant because the investment of proceeds of third-party loans are contributions of cash, not indebtedness. That reasoning, however, would also allow third-party loans that are secured by the assets of the NCE. The regulations and precedent decisions, however, specifically preclude such financing.

In addition, the definition of indebtedness is not limited to promises by the petitioner to pay the NCE. The regulatory definition of "capital" precludes any indebtedness secured in whole or in part by the assets of the NCE. As the NCE would be unlikely to accept the assets it already owns as security for a promise to pay itself, the definition must include third-party loans as indebtedness. Therefore, the requirements for promissory notes set forth in *Matter of Izummi*, 22 I&N Dec. at 193, and *Matter of Hsiung*, 22 I&N Dec. 201, 203-04 (Assoc. Comm'r 1998), must be met.

Moreover, *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998), provides that bank statements and other financial statements cannot establish that the petitioner is the legal owner of capital where they show someone else as the legal owner.

Matter of Ho is relevant to an evaluation of loan proceeds as a source of an investment of capital for two reasons. First, it is consistent with the requirement that a petitioner must establish that she has placed her own capital at risk (i.e., that she is the legal owner of the invested capital being placed at risk). While *Matter of Ho*, as well as the applicable statute, regulation or precedential case authority, have not precisely defined the concept of "legal ownership," how other cases have treated loan proceeds is relevant to their treatment in analogous contexts to determine whether a petitioner is the "legal owner" of cash loan proceeds. As discussed above, the petitioner's loan does not fall within the parameters of a consumption loan. Thus, the reference to ownership of cash in Taiwan law relating to consumption loans is not determinative. When an individual receives loan proceeds, she is also obligated to repay a corresponding amount to the lender of such proceeds at a defined time,

usually along with interest payments. Within the context of U.S. tax law, because the receipt of loan proceeds is combined with the corresponding obligation to repay, there is no accession to wealth on the part of the borrower and, for this reason, the United States Internal Revenue Service (IRS) does not consider loan proceeds as the borrower's income. *Cf.* 26 C.F.R. § 1.61-12(a) (stating that loan proceeds become realized income if the loan is forgiven). Within the immigration context, *Matter of Soffici* touched upon this issue where the petitioner received a portion of his investment funds as a loan from his father. In a footnote to the source of funds discussion, the decision states, “[a] petitioner must also establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are his own. The petitioner has already conceded that the funds lent to Ames are not his; the funds belong to his father and must be repaid.” 22 I&N Dec. at 165, n.3. Thus, this decision considered the issue of whether loan proceeds in general constitute a petitioner's “own” capital and concluded in the negative.

This approach is also consistent with United States Citizenship and Immigration Services' (USCIS) approach with regard to non-cash “capital” contributions as well. For example, it is insufficient for a petitioner to show that she has contributed “capital” in the form of an asset (e.g., machinery, equipment, real property, etc.) unless the investor is also able to establish her ownership of the asset. If the investor provides evidence that she contributed to the NCE a capital asset which she borrowed, then the contribution of that asset would not be qualifying capital as it is a contribution of an asset owned by another. Likewise, if the investor provides evidence that she borrowed cash capital, then the contribution of that cash would also not be qualifying capital as it is a contribution of cash capital owned by another.

Second, *Matter of Ho* is consistent with the notion that USCIS must scrutinize the investment of loan proceeds, from an evidentiary standpoint, differently than an investment of cash capital actually owned by the investor. The evidentiary standard set forth at 8 C.F.R. § 204.6(j)(2)(i) and (iv) provides that when a petitioner is the actual owner of the cash investment capital (from a lawful source), she may provide bank statements and other financial documents as evidence of the investment. The regulation at 8 C.F.R. § 204.6(j)(2)(v) requires the following evidence of investment:

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.

In this case, the loan from Mr. [REDACTED] constituted other evidence of borrowing; thus, the petitioner must also document that the loan was secured by her own assets. The record, including the October 29, 2012 Loan Agreement, reflects that the loan was not secured by the petitioner's assets. Therefore, the petitioner has not established that the financing complies with requirements set forth in the regulations at 8 C.F.R. § 204.6(e) (definition of capital), 8 C.F.R. § 204.6(j)(2)(v), *Matter of Izummi* and *Matter of Hsiung*.

As ascertained from the above, a borrower of cash loan proceeds has merely been granted temporary use of the cash loan proceeds and would therefore not be the legal owner. Accordingly, the

regulation at 8 C.F.R. § 204.6(j)(2)(v) is the only other evidentiary avenue expressly contemplated by the regulations to establish an investment of cash loan proceeds (i.e., evidence of borrowing secured by assets of the petitioner).

For all the reasons stated above, particularly given the repayment obligations imposed and the shifting of loss to Mr. [REDACTED] apparent from the requirement to only repay that amount the petitioner receives when she withdraws her partnership interest, the loan proceeds in this matter are the proceeds of “indebtedness.” Consequently, and pursuant to 8 C.F.R. § 204.6(e), loan proceeds must also then be “secured by assets owned by the alien entrepreneur, provided that 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” and subject to the evidentiary requirements described in *Matter of Ho*, the regulation at 8 C.F.R. § 204.6(j)(2)(v) and other precedential cases. In this case, the unsecured loan from Mr. [REDACTED] does not meet the requirements of indebtedness as capital.

Accordingly, the petitioner has not established that the funds she obtained from Mr. [REDACTED] and invested in the NCE qualify as capital investment in the NCE.

C. Source of Funds

To establish the lawful source of funds, 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. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. 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.

On appeal, the petitioner asserts that the chief erred in requesting [REDACTED] documents relating to the petitioner’s November 2011 wires of funds to the NCE’s escrow account. Although the chief, in his September 30, 2013, decision referenced a request for [REDACTED] documents, he did not rely on the lack of this evidence to make his findings in the November 12, 2013 decision, which is the basis of this appeal. As such, the path of funds into escrow is no longer in contention.

Under the October 29, 2012 Subscription Agreement, to become one of the NCE’s limited partners, the petitioner was to make a \$500,000 capital contribution to the NCE and a \$50,000 syndication fee payment to the NCE’s general partner, [REDACTED]. The evidence shows that on November 22 and 23, 2012, the petitioner wired \$400,000 and \$150,100, respectively, from her account ending in 9866 to the NCE’s escrow account ending in 4898. A November 27, 2012 email from [REDACTED] confirmed the petitioner’s two wires totaling \$550,100 to the NCE’s escrow account. The petitioner asserts that these funds were proceeds from an unsecured loan she obtained from Mr. [REDACTED].

The petitioner has provided insufficient evidence showing the lawful source of the \$550,100 she received from Mr. [REDACTED]. The petitioner has submitted a September 20, 2012 Land Sale Agreement, indicating that Mr. [REDACTED] sold his real properties in [REDACTED] District, [REDACTED] Taiwan for 14 million New Taiwan Dollar (NT\$), or approximately \$476,367.² On appeal, the petitioner asserts that the chief miscalculated the value of NT\$14 million in his September 30, 2013 and November 12, 2013 decisions as only \$409,000. The chief, however, expressly accepted the petitioner's assertion that the proceeds from the property sale were approximately \$480,000 in the November 12, 2013 decision. Specifically, on page 5 of the decision, the chief first acknowledged that the petitioner claimed that the approximate value of the property sale was "\$480,000." The chief subsequently concludes on the same page:

The record is not sufficient to show that Mr. [REDACTED] had sufficient funds available from his earned income . . . to have been able to loan the approximate equivalent of \$70,000 to the petitioner in addition to the approximate sum of \$480,000 from the sale of real property for the full amount of the \$550,000 loan.

Thus, the miscalculation in the September 20, 2012 decision is no longer at issue.

The bank statements for an account ending in 8056 show that before the sale of his properties, Mr. [REDACTED] had NT\$21,687,954, or approximately \$737,959 in the account.³ Although the petitioner has submitted documents relating to Mr. [REDACTED] income between 2007 and 2011, for the reasons set forth below, the petitioner has not provided sufficient evidence showing the complete path of the NT\$21,687,954 into that account or that Mr. [REDACTED] accumulated the funds through income he earned lawfully.

On September 20, 2012, Mr. [REDACTED] received a NT\$7 million "linked deposit," and on October 5, 2012, he received an additional NT\$ 7 million as a "deposit." The petitioner asserts that these were sale proceeds from Mr. [REDACTED] properties. After Mr. [REDACTED] received the NT\$14 million, he had NT\$36,557,409, or approximately \$1,248,410, in his account ending in 8056.⁴ Between September 21, 2012 and October 30, 2012, Mr. [REDACTED] withdrew a total of NT\$15,833,100 from his account ending in 8056, exchanged them for \$541,000, and deposited them into his account ending in 6222.⁵ There were six exchanges:

- (1) On September 21, 2012, he exchanged NT\$586,800 for \$20,000;
- (2) On October 9, 2012, he exchanged NT\$585,700 for \$20,000;
- (3) On October 26, 2012, he exchanged NT\$1,463,750 for \$50,000;

² U.S. Dollar amount on September 20, 2012 obtained from <http://www.oanda.com/currency/converter/>, accessed on May 27, 2014 and incorporated into the record of proceeding.

³ U.S. Dollar amount on September 20, 2012 obtained from <http://www.oanda.com/currency/converter/>, accessed on May 27, 2014 and incorporated into the record of proceeding.

⁴ U.S. Dollar amount on October 5, 2012 obtained from <http://www.oanda.com/currency/converter/>, accessed on May 27, 2014 and incorporated into the record of proceeding.

⁵ NT\$586,800 + NT\$585,700 + NT\$1,463,750 + NT\$5,852,600 + NT\$2,927,500 + NT\$4,416,750 = NT\$15,833,100

- (4) On October 29, 2012, he exchanged NT\$5,852,600 for \$200,000;
- (5) On October 29, 2012, he exchanged NT\$2,927,500 for \$100,000; and
- (6) On October 30, 2012, he exchanged NT\$4,416,750 for \$151,000.

The petitioner has provided insufficient evidence to show that the funds Mr. [REDACTED] used in these exchanges were sale proceeds of his properties or funds he already had in his account ending in 8056 before the sale of the properties. Moreover, Mr. [REDACTED] received NT\$14 million from the sale of his properties. The bank statements for his account ending in 8056, however, show that he withdrew over NT\$15.83 million to exchange for \$541,000.

On November 1, 2012, Mr. [REDACTED] withdrew \$551,000 from his account ending in 6222 and deposited the funds in the petitioner's account ending in 9866. For reasons that the petitioner did not explain, these funds remained in the petitioner's account until she withdrew the funds and deposited them back into Mr. [REDACTED]'s account on November 12 and 13, 2012. Between November 7 and November 21, 2012, Mr. [REDACTED] withdrew a total of NT\$6,397,100 from his account ending in 8056, exchanged them for \$220,000, and deposited them in his account ending in 6222. There were five exchanges:

- (1) On November 7, 2012, he exchanged NT\$875,100 for \$30,000;
- (2) On November 8, 2012, he exchanged NT\$1,165,200 for \$40,000;
- (3) On November 9, 2012, he exchanged NT\$2,908,000 for \$100,000;
- (4) On November 12, 2012, he exchanged NT\$869,400 for \$30,000; and
- (5) On November 12, 2012, he exchanged NT\$579,400 for \$20,000.

These new funds total \$220,000. As stated above, on November 12 and 13, 2012, the petitioner withdrew \$490,000 and \$61,000, respectively, from her account ending in 9866, and deposited the funds back in Mr. [REDACTED] account ending in 6222, bringing Mr. [REDACTED] account balance to \$771,000. On November 22, 2012, Mr. [REDACTED] withdrew \$550,100 and deposited the funds in the petitioner's account ending in 9866. Given the comingling of large sums, only some of which have a documented source, the petitioner has provided insufficient evidence showing that the \$550,100 came from the sale proceeds of Mr. [REDACTED] properties.

As the chief pointed out in his November 12, 2013 decision, the petitioner has not demonstrated the lawful source of Mr. [REDACTED] funds because according to the petitioner, Mr. [REDACTED] earned approximately \$47,214 in 2007, \$51,928 in 2008, \$60,697 in 2009 and \$95,023 in 2010. In 2008, 2009, and 2010, this income represents that of both Mr. [REDACTED] and his second wife. Mr. [REDACTED] however, is obligated to pay the petitioner \$60,000 alimony annually from 2008 until 2015 under an April 3, 2008 Agreement of Divorce in addition to his living expenses and those of his second wife. On appeal, the petitioner asserts that the assumption that Mr. [REDACTED] had paid the petitioner \$60,000 annually pursuant to the Agreement Divorce "was an unsupported assumption [because] no statement and no evidence was ever given that these payments were actually made, which they were not" The evidence in the record does not support the petitioner's assertion. The evidence in the record, specifically, the Agreement of Divorce, establishes Mr. [REDACTED] obligation to make a \$60,000 alimony payment annually. The petitioner's unsubstantiated statement of non-payment is insufficient to show that Mr. [REDACTED] did not make the payments as obligated under the Agreement of Divorce. Going

on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Accordingly, the petitioner has failed to document the source of the funds she invested in the NCE or that Mr. [REDACTED] had accumulated the funds lawfully.

III. SUMMARY

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In a visa petition proceeding, 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.