



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF B-L-

DATE: DEC. 4, 2015

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: FORM I-526, IMMIGRANT PETITION BY ALIEN ENTREPRENEUR

The Petitioner, an individual, seeks classification as an immigrant investor. *See* Immigration and Nationality Act (the Act) § 203(b)(5), 8 U.S.C. § 1153(b)(5). The Chief, Immigrant Investor Program Office, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner indicated that she invested in [REDACTED], the new commercial enterprise (NCE). The NCE 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). A 2011 Business Plan for [REDACTED], the job creating entity [REDACTED] stated the NCE will receive foreign immigrants' investments and loan the funds to [REDACTED] which will manage and oversee [REDACTED] the operating company of a 60 million gallon per year ethanol production facility in [REDACTED] California (Project Plant). The Business Plan and a July 2013 Supplement No. 4 to [REDACTED]' Confidential Private Placement Memorandum Convertible Promissory Notes provided that the NCE will raise a total of \$36 million from 72 immigrant investors, who will contribute approximately 24 percent of the capital needed for the Project Plant. The Petitioner noted that the NCE and [REDACTED] are within a targeted employment area (TEA), and that the required amount of capital in this case is \$500,000. The Chief determined that the Petitioner did not establish that she invested or was in the process of actively investing in the NCE, or that she obtained the invested funds through lawful means.

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:

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(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. FACTUAL AND PROCEDURAL HISTORY

The Petitioner submitted the petition on October 18, 2013. On February 13, 2014, the Director, California Service Center, issued a request for evidence (RFE), to which the Petitioner responded on May 8, 2014, with additional material. On January 5, 2015, the Chief issued a notice of intent to deny (NOID), which the Petitioner answered on February 11, 2015, with supplemental documentation. On March 18, 2015, the Chief denied the petition finding that the Petitioner did not invest or was not in the process of actively investing in the NCE, and did not prove the lawful source of her funds. On April 20, 2015, the Petitioner filed an appeal, asserting that bank materials verified she had invested in the NCE, and that the capital she invested derived from her spouse's sale of his biotech company in China.

III. ISSUES PRESENTED ON APPEAL

A. Investment of Capital

On appeal, the Petitioner asserts that on February 11, 2015, she wired \$539,000 to the NCE's [REDACTED] escrow account, pursuant to a June 24, 2014, Amended and Restated Escrow Agreement, and that the transaction demonstrates her actual investment in the NCE. The regulation at 8 C.F.R. § 204.6(e) defines capital and investment. The regulation at 8 C.F.R. § 204.6(j)(2) explains that a petitioner must have 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 a petitioner is actively in the process of investing. A petitioner must actually commit the required amount of capital. The regulation then lists the types of documents a petitioner may submit to meet this requirement. The full amount of the requisite investment must be made available to the business most closely responsible for creating the employment upon which the petition is based. *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998).

The Petitioner has not established that she owned the funds wired to the NCE's escrow account. The record shows that on July 22, 2013, [REDACTED], whom the Petitioner refers to on appeal as her "currency exchange conduit," wired \$539,000 to the NCE's former escrow account with [REDACTED]

[REDACTED] On January 27, 2015, after eliminating its escrow department, [REDACTED] returned \$539,000 to [REDACTED] who then wired \$539,000 to the Petitioner on February 9, 2015.

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Two days later, on February 11, 2015, the Petitioner wired \$539,000 to the NCE's [REDACTED] escrow account.

In response to the Director's RFE, the Petitioner explained that [REDACTED] exchanged currency with her spouse. In her NOID response, the Petitioner stated that she had "first deposited [the] equivalent amount of RMB in [REDACTED] account in China" before [REDACTED] wired the investment capital to [REDACTED] in July 2013. The record, however, lacks evidence in support of the Petitioner's assertion. The Petitioner's unsupported declarations do not satisfy her burden of proof. *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)).

As the Chief found in his decision, the Petitioner did not document that she had transferred at least \$500,000 to [REDACTED] before his July 2013 wire to [REDACTED]. Specifically, the Chief noted that the "Petitioner did not provide any evidence showing any transfers of funds between her own accounts and the [REDACTED] escrow account, and there is no evidence of any transfers between her account and those of [REDACTED]." On appeal, the Petitioner does not address this issue. Instead, she focuses on explaining the path of funds subsequent to [REDACTED] July 2013 wire to [REDACTED]. At issue here is whether [REDACTED] \$539,000 had originated from the Petitioner. Without such proof, the Petitioner has not demonstrated that she has invested or is in the process of actively investing any capital in the NCE.

On appeal, the Petitioner asserts that the NCE assigned her an investor identifier – [REDACTED] and that NCE papers, including a one-page item entitled "Acceptance," executed on April 6, 2015, and a February 11, 2015, letter from the NCE's chairman, showed the identifier and thus demonstrated her actual investment in the NCE. The one-page "Acceptance," which memorializes the NCE's acceptance of a Subscription Agreement for the NCE's Limited Partnership Units, is an incomplete document. It is paginated as page 14, and the record does not contain pages 1 through 13 or a Subscription Agreement. Moreover, page 14 of a September 25, 2013, executed Subscription Agreement, which was also entitled "Acceptance," did not reference the Petitioner's investor identifier. Rather, page 1 of that agreement had a different investor identifier and the Petitioner's name. In addition, the Petitioner has not explained why the NCE would accept her Subscription Agreement in April 2015, if it had already done so in September 2013. Furthermore, as part of her initial filing, in addition to the 2013 Subscription Agreement, the November 2011 revised AEA Confidential Private Placement Memorandum Convertible Promissory Notes, and the [REDACTED] Investor Certificate for the NCE's Limited Partnership Units reflected her investor identifier as [REDACTED] not [REDACTED] as she stated on appeal.

The record lacks evidence showing that the Petitioner transferred at least \$500,000 to [REDACTED] to invest in the NCE before his July 2013 \$539,000 wire to the NCE's former escrow account. In addition, she has submitted inconsistent documents relating to her investor identifier. Accordingly, the Petitioner has not established that she has placed her capital at risk in the NCE pursuant to the regulation at 8 C.F.R. § 204.6(e).

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B. Source of Funds

The regulation at 8 C.F.R. § 204.6(j)(3) lists the type of items a petitioner must provide, 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 showing the deposit of funds. *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998); *Izummi*, 22 I&N Dec. at 195. Without documentation of the path of the funds, a petitioner cannot meet her burden of demonstrating that the funds are her own. *Ho*, 22 I&N Dec. at 210-11.

Moreover, as the Chief noted in his decision, the record had a number of foreign language materials that did not contain a translation certification that met the regulatory requirements under 8 C.F.R. § 103.2(b)(3). The regulation provides: "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." These materials, filed in her NOID response, included "Transaction of Bank Record of [the Petitioner's spouse]" and "Agreement on Cooperation and the Transfer of Ownership," which related to the Petitioner's spouse's sale of [REDACTED]

On appeal, the Petitioner submitted a February 1, 2015, translation certificate, noting that [REDACTED] who is also her counsel, translated the "above documents, relating to Response to NOID, from Chinese to English accurately and to the best of [his] ability." The certificate, however, did not state that the translations were "complete and accurate," as required under the plain language of the regulation.

Even if we were to consider the foreign language material and their translations, the Petitioner has not established the complete path of her funds. In response to the RFE, the Petitioner explained that she was providing evidence of her spouse's consulting fees and real estate sale as corroboration of the lawful source of her funds. In his decision, the Chief found that the Petitioner did not demonstrate that her investment funds derived from a real estate property sale. The Petitioner has not specifically challenged the Chief's finding on appeal, rather she acknowledges that documentation of that sale is not available.

Instead, the Petitioner asserts that her investment funds derived from her spouse's sale of his company, [REDACTED] not his real estate property. In her NOID response, the Petitioner submitted an English translation entitled "Transaction of Bank Record of [the Petitioner's spouse]." The document included two April 2013 incoming wires from [REDACTED] totaling 10 million RMB, approximately \$1,593,840.¹ According to an English translation entitled "Agreement on Cooperation and the Transfer of Ownership," on October 31, 2010, the Petitioner's spouse sold [REDACTED] for 10 million RMB. The agreement also discussed a 10 million RMB loan that the Petitioner's spouse should have repaid in 2012. The Petitioner has not explained why in April 2013, her spouse would receive proceeds of a sale

¹ See <http://www.oanda.com/currency/converter/>, accessed on November 19, 2015, and incorporated into the record of proceeding.

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completed over two and a half years earlier, or proceeds of a loan that must be repaid months earlier. In her NOID response, the Petitioner indicated that her spouse sold [REDACTED] in 2013, not 2010 as the documents reflect.

Furthermore, assuming *arguendo* that the Petitioner's spouse received 10 million RMB in April 2013 for the 2010 sale of his business, the record lacks evidence showing that he transferred any of the funds to the Petitioner or [REDACTED] before his \$539,000 wire to [REDACTED]. As noted, to establish the lawful source of her funds, the Petitioner must document the complete path of the funds. The Petitioner has not done so here with her filings.

Simply going on record without supporting documentation is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165 (citing *Treasure Craft of California*, 14 I&N Dec. at 190). These "hypertechnical" requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 1025, 1040 (E.D. Calif. 2001), *aff'd*, 345 F.3d 583 (9th Cir. 2003) (affirming a finding that a petitioner had not established the lawful source of her funds because she did not designate the nature of all of her employment or submit five years of tax returns). As the Petitioner has not sufficiently shown the source of her funds with probative evidence, she did not prove that she invested capital obtained through lawful means pursuant to the regulation at 8 C.F.R. § 204.6(j)(3).

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.

Cite as *Matter of B-L-*, ID# 14720 (AAO Dec. 4, 2015)