



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

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

MATTER OF J-Z-

DATE: DEC. 30, 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] a 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). The Petitioner specified that the investment was not in a targeted employment area for which the required amount of capital has been adjusted downward. There, the minimum investment amount is \$1 million. 8 C.F.R. § 204.6(f).

The record contains a February 2013 Loan Agreement, a February 2013 Confidential Private Placement Memorandum, and a May 2013 Modification of the Confidential Private Placement Memorandum and Subscription Agreement. According to these documents, three entities [REDACTED] will borrow \$19 million from the NCE to construct a residential complex in [REDACTED] California. The Modification of the Confidential Private Placement Memorandum and Subscription Agreement noted that the NCE will raise \$19 million by offering 19 units of partnership interests to limited partners, who will each invest \$1,045,000 in the NCE. The Petitioner is one of the NCE's limited partners. The Petitioner stated on part 3 of the petition that she owns "at least 4.21%" of the NCE. The Chief determined that the Petitioner did not establish that she obtained the invested funds through lawful means.

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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:

- (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 May 5, 2014. On February 4, 2015, the Chief issued a request for evidence (RFE), asking the Petitioner to document the lawful source of funds she wired to the NCE. The Petitioner filed a response on March 31, 2015, supported by tax and bank records, and an income verification statement. On April 30, 2015, the Chief denied the petition, finding that the Petitioner did not establish the lawful source of her funds. On June 2, 2015, the Petitioner appealed that decision, asserting that her filings show that the capital she invested derived from the income of her and herself.

III. ISSUE PRESENTED ON APPEAL

A. Source of Funds

The regulation at 8 C.F.R. § 204.6(j)(3) lists the types 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); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). Without documentation of the path of the funds, a petitioner cannot meet her burden of demonstrating that the funds are her own funds. *Ho*, 22 I&N Dec. at 210-11.

In her initial filing, the Petitioner asserted that between 2008 and 2013, the income from her spouse and herself totaled \$1,108,265.10. Specifically, she stated that her husband earned \$753,261 from [REDACTED] and \$207,754.10 from [REDACTED] while she received \$147,250 as the vice president of [REDACTED]. The Petitioner submitted income verification and tax documents as corroborating evidence. Assuming the income figures are

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correct, as the Chief explained in his decision, the record shows the combined income, but does not demonstrate that they retained at least \$1,045,000 of their earnings to invest in the NCE in early 2014. The Petitioner has not provided proof confirming that between 2008 and 2013, her family spent less than \$64,000, or six percent of their total income, saved their remaining wages, and that she invested the saved funds in the NCE in 2014.

In her RFE response, the Petitioner submitted bank documents that showed: (1) on January 3, 2014, her husband had a balance of \$1,340,000.72 – an amount more than their combined income between 2008 and 2013 – in his [REDACTED] (2) on January 20, 2014, he withdrew and wired \$540,000 to the Petitioner; and (3) on February 20, 2014, he transferred an additional \$500,000 to the Petitioner. The Petitioner asserted that she invested funds she received from her husband in early 2014. The Petitioner did not provide bank records dated before January 2014, indicating when the \$1,340,000.72 accumulated in her husband's account or the source of the amount. Without evidence substantiating that the funds derived from her and her husband's income over a period of five years between 2008 and 2013, with only a small percentage going for living expenses, the Petitioner has not demonstrated the complete path of the funds, and has not established the lawful source of funds she wired to the NCE.¹

Moreover, although the Petitioner stated that she earned \$147,250 between 2010 and 2013 as the vice president of [REDACTED] page 19 of the Subscription Agreement, Investor Questionnaire, which she signed on February 14, 2014, indicated that she was a sales manager, not the vice president, at the company. This issue is material as the Petitioner asserted that part of her investment capital derived from salaries she received as the vice president of the company. As the Petitioner has provided inconsistent documents relating to her employment, "it is incumbent upon [her] to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner has not explained or reconciled the inconsistency.

Simply going on record stating that funds invested in the NCE came from lawful sources without supporting documentation is insufficient for the purpose 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)). These "hypertechnical" requirements serve a valid government interest: confirming that the funds utilized are not of suspect

¹ The Petitioner signed the escrow agreement, which listed an escrow account number ending in [REDACTED] on February 14, 2014. Prior to that date, the Petitioner had already transferred \$545,000 to a different escrow account ending in [REDACTED] via a third escrow account ending in [REDACTED]. On February 27, 2014, the escrow agent transferred \$500,000 to an escrow account ending in [REDACTED] and \$45,000 to an escrow account ending in [REDACTED]. All of these escrow accounts were for the benefit of a different limited partnership. On April 10, 2014, the escrow agent transferred these funds to an escrow account for the NCE ending in [REDACTED]. On February 28, 2014, the Petitioner transferred an additional \$500,000 to the escrow account in the escrow agreement, ending in [REDACTED] which on March 3, 2014, transferred the funds to the account ending in [REDACTED]. As of that date, the account ending in [REDACTED] had received the full \$1,045,000 from the Petitioner. While that account is not the one listed in the escrow agreement, it is for the benefit of the NCE.

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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 has not demonstrated 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 J-Z-*, ID# 14962 (AAO Dec. 30, 2015)