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

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

MATTER OF C-Y-

DATE: AUG. 19, 2016

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

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

The Petitioner seeks classification as an immigrant investor based on her investment in the construction of industrial facilities, a project of a U.S. Citizenship and Immigration Services (USCIS) designated regional center, [REDACTED].¹ See Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5). This fifth preference classification makes immigrant visas available to foreign nationals who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.

The Chief of the Immigrant Investor Program Office denied the petition. Specifically, he found that the Petitioner did not demonstrate that she obtained her investment capital through lawful means or that she placed her own assets at risk.

The matter is now before us on appeal. In her appeal, the Petitioner submits additional documentation and a brief, stating that she provided sufficient evidence to establish eligibility.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in a new commercial enterprise (NCE). The commercial enterprise can be any lawful business that engages in for-profit activities. The foreign national must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. This job creation should generally occur within two years of the foreign national's admission to the United States as a Conditional Permanent Resident. Specifically, section

¹ The authority to designate regional centers is based on section 610(c) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), as amended. The purpose of the regional center framework is to encourage pooled immigrant investment in a range of business and economic development prospects within designated regional centers. This regional center model offers an immigrant investor already-defined investment opportunities.

203(b)(5)(A) of the Act, as amended, provides that a foreign national may seek 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).

Permanent Resident Status under this program is conditional; foreign nationals must petition to remove conditions 90 days prior to the second anniversary of obtaining resident status. Section 216(A) of the Act, 8 U.S.C. § 1186b.

The implementing regulation at 8 C.F.R. § 204.6(e) includes the following definitions:

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.

Regarding an investment of lawfully obtained funds, the regulation at 8 C.F.R. § 204.6(j)(3) provides:

To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:

- (i) Foreign business registration records;
- (ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real,

Matter of C-Y-

personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

(iii) Evidence identifying any other source(s) of capital; or

(iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

Finally, the regulation at 8 C.F.R. § 204.6(j)(2) discusses the necessity for an at risk investment as follows:

To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has 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 the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital.

II. ANALYSIS

The petitioner invested \$500,000 into [REDACTED] a new commercial enterprise. [REDACTED] proposes to pool capital to loan to [REDACTED] the job creating entity. The Petitioner states that the source of her investment is a personal loan, secured by her real property, from [REDACTED]. The Chief determined that the Petitioner did not establish the lawful source of her investment funds or that she placed her own assets at risk, citing several deficiencies in the submitted evidence, to be discussed below.

To qualify for an EB-5 visa, the invested capital must have been “obtained through lawful means.” 8 C.F.R. § 204.6(j)(3). Specifically, “capital” does not include assets acquired directly or indirectly by unlawful means. 8 C.F.R. § 204.6(e). A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds.² Without documentation of the path of the funds, a petitioner cannot meet his burden of establishing that the funds are his own funds.³ Statements made without supporting documentation are of limited

² *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).

³ *Id.*

(b)(6)

Matter of C-Y-

probative value and are not sufficient to meet the burden of proof in these proceedings.⁴ These requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin.⁵

A. Lawful Source of Funds

1. Loan from [REDACTED]

At the initial filing of the petition, the Petitioner indicated that she obtained her \$500,000 capital investment based on a personal loan from [REDACTED] secured by the Petitioner's property located on [REDACTED] in [REDACTED] China. As the Petitioner did not submit documentary evidence demonstrating the lawful source of [REDACTED] funds, the Chief issued a request for evidence (RFE). In response, the Petitioner stated that she "requested [REDACTED] to provide proof of her source of funds, but she refused." As such, the Chief determined that the Petitioner did not establish that [REDACTED] lawfully obtained the funds she loaned to the Petitioner.

On appeal, the Petitioner does not address or submit evidence regarding this issue. Accordingly, as the Petitioner has not demonstrated the source of [REDACTED] funds, she has not established that she obtained her investment capital through lawful means consistent with the regulation at 8 C.F.R. § 204.6(j).

2. The Petitioner's Source of Funds Used to Purchase Property

First, the evidence in the record includes inconsistencies regarding the purchase price of the [REDACTED] property, which was used to secure the loan used for investment. The Petitioner submitted an audit report stating that she purchased the property in August 2009 for 1,453,000 Renminbi (RMB), as well as a general tax certificate for a property reflecting a taxable amount of RMB 1,453,000. However, she also presented an August 2009 mortgage contract from [REDACTED] reflecting that the Petitioner obtained a loan on the [REDACTED] property for RMB 2,640,000, and listing the property's purchase price as RMB 5,688,500. The Chief noted the conflicting prices, a difference of RMB 4,235,000. The Petitioner must resolve the inconsistency with independent, objective evidence pointing to where the truth lies.⁷ On appeal, although the Petitioner states that the Chief erred in his finding regarding the purchase price, she does not address or submit documentary evidence resolving the discrepancy. Further, if the Petitioner purchased the property for RMB 5,688,500, she offered no explanation as to why she only paid taxes on RMB 1,453,000.

⁴ *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)).

⁵ *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Calif. 2001) *aff'd* 345 F.3d 683 (9th Cir. 2003) (affirming a finding that the petitioner did not establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

⁶ The record does not establish the personal or professional relationship, if any, between the Petitioner and [REDACTED].

⁷ *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

(b)(6)

Matter of C-Y-

In addition to the unresolved price discrepancy, the Petitioner has not documented the lawful source of the funds used to purchase the property. The Petitioner initially indicated that she purchased the [REDACTED] property using her salary and business investments. In response to the Chief's RFE, however, she stated that the purchase was also funded in part from the sale proceeds of five other properties she owned. While the Petitioner submitted documentary evidence for five properties, the Chief found that the Petitioner did not: (1) demonstrate the lawful source of funds used to purchase the properties, (2) provide sufficient documentation of her sale of the properties, and (3) show that the proceeds were later available to purchase the [REDACTED] property. The Chief also determined that the Petitioner did not present documentation to support many of her statements, she provided partial and incomplete translations, and she offered inconsistent documentation.

Specifically, regarding the property called Room 1202, the Petitioner submitted a partially translated appraisal report. With respect to Room 1001, the Petitioner offered an unsigned letter from the [REDACTED] without indicating which documents the author reviewed to reach his opinions. For Room 2204, the Petitioner presented documentation reflecting that she sold the property several months before she paid off the original mortgage on that property. Next, the Petitioner submitted documentation that provided conflicting property addresses and square footage pertaining to Room 2605. Finally, regarding Room 2504, the Petitioner offered inconsistent documentation with respect to the mortgage amount and mortgager.

On appeal, the Petitioner claims that she "is not required to provide evidence in this regard because she [did] not use the funds from the purchase of these properties for her investment to the EB5 program." However, the Petitioner states in her RFE response and appellate brief that she used the proceeds from the sale of these five properties to purchase the [REDACTED] property. As the Petitioner used the [REDACTED] property as collateral to secure a loan from [REDACTED] the Petitioner must show that she "obtained through lawful means" her invested capital. 8 C.F.R. § 204.6(j)(3).

Furthermore, the Petitioner submits three letters from [REDACTED] "to verify the consistencies of the address for three of the real properties [Rooms 2204, 2504, and 2605] owned by the Petitioner." The letters, however, are unsigned and do not explain how [REDACTED] made their determinations, such as describing any documents that the authors reviewed or whether the company was involved with the property developments such that they have firsthand knowledge of the events. Regardless, for the reasons discussed above, the Petitioner's documentation contains discrepancies that are not resolved by the Petitioner on appeal. Moreover, the Petitioner does not address or submit documentary evidence establishing the source of funds used to purchase the five properties and does not document the path of funds from the sale of the properties to the purchase the [REDACTED] property.

(b)(6)

Matter of C-Y-

3. Business Investment and Employment

Regarding the Petitioner's business investment, the Petitioner claims that she also used her investment earnings from [REDACTED] and [REDACTED] a wholly-owned subsidiary of [REDACTED]. The Chief determined that the Petitioner did not establish the lawful source of her RMB 3,700,000 investment in [REDACTED] and her \$350,000 investment in [REDACTED]. In addition, the he found inconsistencies in the Petitioner's supporting documentation regarding these businesses. For example, although the Petitioner indicated that she was the only shareholder of [REDACTED] the articles of association submitted in the RFE response showed another individual as the shareholder.

The Chief further indicated that the Petitioner's résumé submitted at the initial filing of the petition differed from her previous nonimmigrant visa applications. For example, the Petitioner listed different employers, addresses, positions, and employment dates. Although in the Petitioner's RFE response she submitted some documentation that was consistent with her initial evidence, the Chief found additional inconsistencies and irregularities. For instance, the Petitioner offered an employment certification from [REDACTED] stating that she has been the business' president since June 2009 and earns RMB 100,000 per year; however the Petitioner's corrected résumé makes no reference to employment with [REDACTED].

On appeal, the Petitioner does not address or submit documentary evidence regarding her investment earnings with [REDACTED] and [REDACTED]. Regarding the Petitioner's employment, she claims that the submission of some consistent documentation meets the preponderance of evidence standard. The Petitioner's inconsistent documentation has limited probative value. *Matter of Ho*, 19 I&N Dec. at 591-92. As the Petitioner did not submit independent, objective evidence to reconcile the discrepancies articulated in the Chief's decision, the Petitioner has not established the lawful source of funds from her business investments and employment.

B. Placement of the Petitioner's Own Assets at Risk

Where the source of the investment is a loan, that indebtedness must be sufficiently secured. 8 C.F.R. § 204.6(e) (definition of "capital" and "invest").⁸ To show that the Petitioner has placed

⁸ Instructive on this question is *Matter of Soffici*, 22 I&N Dec. at 162. In addressing the new commercial enterprise's bank loan, after first noting that the corporation was a separate legal entity from that petitioner, the decision states:

[E]ven 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 as cash. *See also United States v. O'Connor*, 158 F. Supp. 2d 697, 704-05 (E.D. Va. 2001) (noting that if a petitioner invested loan proceeds, he or she must show "that the debt is secured by the assets of the [petitioner], not of the commercial enterprise in which he or she is investing," and "that [he or she] is personally and primarily liable for the debt").

(b)(6)

Matter of C-Y-

her own assets at risk, she must show that the loan financing her investment is secured by property that has a fair market value covering the full amount of the loan. *Matter of Hsiung*, 22 I&N Dec. 201, 203-04 (Assoc. Comm'r 1998). In this instance, the Petitioner must show that the value of her property covered the full amount of her RMB 3,800,000 (\$571,982)⁹ loan in May 2013 from [REDACTED]. The Petitioner provided a February 2013 appraisal report valuing the [REDACTED] property at RMB 9,105,433, and an August 2015 appraisal for RMB 11,287,968.

When considering whether the loan from [REDACTED] was adequately secured by the Petitioner's property, we must consider whether it was already subject to mortgages. An audit report submitted at the time of filing indicated that the Petitioner previously secured an unspecified loan in January 2011 using the [REDACTED] property as collateral, and that she paid off the loan on March 28, 2012. In response to the Chief's RFE, the Petitioner also submitted an August 2009 [REDACTED] mortgage loan for RMB 2,640,000 on the [REDACTED] property, as well as a certificate stating that the loan had been satisfied. She indicated that "the notarized translation omitted the date of payoff [of] the loan, March 1, 2012, which is contained in the original copy of the proof – highlighted." The Chief determined that as the Petitioner did not provide a full English language translation as required under the regulation at 8 C.F.R. § 103.2(b)(3), the translation lacked probative value and did not demonstrate if and when the mortgage loan was paid in full. In her RFE response, the Petitioner indicated that the [REDACTED] mortgage is the same loan discussed in the audit report, and that the statement and its attachments serve as additional evidence that the loan was paid off. However, we note that the audit report and an attached "Reissued Certificate of Ownership" both refer to a loan dated in January 2011, while the [REDACTED] mortgage was taken out in 2009. Accordingly, the Petitioner has not established that these documents refer to the same loan.

The audit report also reflected that, in April 2013, the Petitioner secured a personal loan from the [REDACTED] in the amount of RMB 5,000,000 using the [REDACTED] property as collateral. In addition, in response to the Chief's RFE, the Petitioner indicated that the [REDACTED] property secured a business loan of an unspecified amount from [REDACTED] for a company in which she has an interest, [REDACTED]. The Petitioner submitted a business contract between [REDACTED] and [REDACTED] demonstrating a business relationship but did not present the business loan contract. In addition, as discussed in the Chief's decision, the Petitioner offered a partial translation of a loan settlement certificate from [REDACTED] indicating that she signed for the loan, and it was paid off on May 4, 2015. A review of the original certificate includes the reference to April 19, 2013, but this date is not reflected in the partial translation. The Petitioner's submission of incomplete translations do not comply with the regulation at 8 C.F.R. § 103.2(b)(3).

The Chief determined that the Petitioner did not demonstrate that the above loans were paid in full when the Petitioner took out the RMB 3,800,000 loan from [REDACTED]. Specifically, the Chief found that if the Petitioner did not disclose or intentionally omitted evidence concerning any

⁹ U.S. currency equivalency determined at www.oanda.com/currency/converter, accessed on August 1, 2016.

(b)(6)

Matter of C-Y-

outstanding mortgages on the [REDACTED] property, it may have voided the mortgage loan or triggered additional concerns. Further, the Petitioner did not provide documentary evidence showing that [REDACTED] had knowledge of the RMB 5,000,000 [REDACTED] personal loan, which was taken out less than 50 days before [REDACTED] loaned the money to the Petitioner, as well as the [REDACTED] loan and the other unspecified loan.¹⁰ Also, the Chief indicated that without evidence showing that the Petitioner paid off the other loans, the Petitioner did not establish that her personal assets adequately secured [REDACTED] loan because the mortgage loans reduce the value of the security on this property.

On appeal, the Petitioner states that she submitted sufficient evidence regarding the [REDACTED] loan and attests that she “paid off the first and second loan secured by the [REDACTED] property] with [the] only outstanding loan of the private loan in the amount of RMB 3,800,000. . . .” The Petitioner does not submit evidence on appeal supporting her statements, and she does not clarify which two loans she is referencing. Statements made without supporting documentation are of limited probative value and are not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). In addition, the Petitioner does not address the inconsistencies and deficiencies discussed in the Chief’s decision. As such, the Petitioner has not demonstrated that she has placed sufficient personal assets at risk.

C. Path of Funds

Although not addressed in the Chief’s decision, a review of the record of proceedings reflects that the Petitioner did not sufficiently document the path of funds from her receipt of [REDACTED] loan to the NCE. The Petitioner submitted documentary evidence of the following transactions:

- An uncertified translation of an individual transaction payment receipt of RMB 3,800,000 from [REDACTED] account to the Petitioner’s [REDACTED] account
- An uncertified translation of an agreement between the Petitioner and 11 individuals to assist her in transferring \$545,000 from her [REDACTED] account to [REDACTED] account
- Uncertified translations of [REDACTED] customer receipts reflecting withdrawals from the Petitioner’s account
- A [REDACTED] foreign language document with uncertificated, handwritten English annotations
- [REDACTED] overseas fund transfer receipts from 11 individuals to the Petitioner’s [REDACTED] account¹¹

¹⁰ The Petitioner’s RFE response included a signed statement from [REDACTED] attesting to her knowledge that the property secured a loan from [REDACTED]

¹¹ The record does not include an explanation of why the individuals did not transfer funds to the Petitioner’s [REDACTED] account, per the submitted agreement.

(b)(6).

Matter of C-Y-

- The Petitioner's [REDACTED] account statement
- A [REDACTED] letter confirming the Petitioner's \$545,000 deposit

At the outset, the Petitioner did not submit certified translations for her foreign language documents as required by the regulation at 8 C.F.R. § 103.2(b)(3). Furthermore, while a review of the [REDACTED] overseas fund transfer receipts contains account numbers for each remitter, the Petitioner did not submit sufficient documentary evidence to establish the transfer of funds from the Petitioner's [REDACTED] account to each of the 11 individuals' accounts. For these reasons, the Petitioner has not sufficiently documented the path of her funds.

IV. CONCLUSION

The Petitioner has not sufficiently documented the lawful source and path of her invested funds or established that she placed sufficient personal assets at risk. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 C-Y-*, ID# 16735 (AAO Aug. 19, 2016)