



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

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

MATTER OF E-V-G-

DATE: AUG. 24, 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 his financing of a real estate business that buys, renovates, and resells property. *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. He concluded that the Petitioner had not demonstrated the lawful source of the invested capital.

The matter is now before us on appeal. In his appeal, the Petitioner submits a brief and maintains that the Chief mischaracterized the evidence.

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

I. LAW

A foreign national investor may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in a new commercial enterprise. 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 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).

The implementing regulation at 8 C.F.R. § 204.6(j) states, in pertinent part, that:

- (3) 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, 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.

With respect to employment creation, the regulation at 8 C.F.R. § 204.6(j)(4)(i) states:

To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:

- (A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
- (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

## II. ANALYSIS

The issues within this appeal relate to whether the invested funds were obtained lawfully, and whether the new commercial enterprise (the NCE) will create at least 10 new full-time positions. The Petitioner indicated that he invested over \$1,000,000 in an existing business established in 2011, [REDACTED] which constitutes the NCE.<sup>1</sup> The NCE purchases real estate in foreclosure proceedings to renovate and resell at a profit, as well as managing the properties it acquires. In denying the petition, the Chief determined the Petitioner did not establish that he invested capital obtained through lawful means.

For the reasons discussed below, we agree with the Chief's ultimate determination that the Petitioner has not established the lawful source of his full investment. We also find the record does not demonstrate that the Petitioner's investment will result in sufficient job creation.

### A. Lawful Source of Funds

Regarding the lawful nature of the invested funds, a petitioner cannot demonstrate the lawful source of funds by only providing bank letters or statements validating 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). If the record does not reveal from where a petitioner's funds originated and the petitioner has not documented the path of the funds, it also stands that he or she has not met the burden of establishing that the invested funds were the petitioner's own. *See Izummi*, 22 I&N Dec. at 195 (citing *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998)). Simply going on record without supporting evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). These 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. 2d 1025, 1040 (E.D. Calif. 2001) *aff'd* 345 F.3d 683 (9th Cir. 2003) (affirming a finding that a petitioner had not shown the lawful source of funds due to his failure to designate the nature of all of his employment or submit five years of tax returns).

The Petitioner indicates that his investment funds derive from the 2012 sales of two properties, one owned by him (Property A) and one owned by his wife (Property B). The record includes documentation of the purchase and sale of both properties, as well as evidence regarding his income used to purchase Property A. At issue is whether the Petitioner established the source of the funds that his wife used to purchase Property B.

The Petitioner's initial submission included evidence regarding two additional properties owned by his wife. He provided evidence that in June 2004, the Petitioner's spouse acquired a property from

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<sup>1</sup>As the NCE is not within a targeted employment area, the required amount of capital in this case is \$1,000,000. 8 C.F.R. § 204.6(f).

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the Russian government (Property C) through a property privatization program. He also documented that in October 2004, the Petitioner's spouse purchased an additional property (Property D).

Responding to the Chief's notice of intent to deny, the Petitioner discussed his wife's properties, stating: "The source of funds for the purchase of real estate in 2008 [Property B] . . . were the proceeds of sale of the apartment transferred free of charge in 2004 [Property C] . . . ." The Petitioner also maintained that due to the passage of time, his spouse was unable to obtain some of the documentation relating to Properties C and D.

The Petitioner provides a more detailed account of the transactions on appeal. He indicates that his wife used the proceeds from selling Property C to purchase Property D, and subsequently sold this asset to buy Property B. He does not provide clarification regarding when his wife sold Property D,<sup>2</sup> or what specific resources contributed toward her purchase of Property B.

On appeal the Petitioner argues that the Chief incorrectly interpreted the evidence as showing the Petitioner's wife only owned one property prior to 2008, when the record established she owned two separate condominiums. While we agree with the Petitioner that the Chief did not acknowledge the wife's ownership of two condominiums, the record does not demonstrate that all of the Petitioner's funds invested in the NCE were obtained through lawful means. Because the sale of Property B partially funded the NCE investment, evidence regarding the money used to purchase this property is relevant to the Petitioner's position that his invested funds are lawful. The Petitioner has not provided sufficient evidence to document his wife's sale of either Property C or Property D, and in turn, to demonstrate how she purchased Property B. Consequently, he has not met his burden of proof establishing the lawful source of the invested funds by a preponderance of the evidence. 8 C.F.R. § 204.6(j)(3).

#### B. Job Creation

The regulation at 8 C.F.R. § 204.6(e) defines employee as an individual who provides services directly to the commercial enterprise and excludes independent contractors. Section 203(b)(5)(D) of the Act defines full-time employment as "employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position." Full-time employment also means continuous, permanent employment. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1039 (E.D. Calif. 2001) *aff'd* 345 F.3d 683 (9th Cir. 2003) (finding this construction not to be an abuse of discretion).

While not discussed by the Chief, a review of the record of proceeding reflects that the Petitioner has not established that he meets the regulatory requirements for job creation. The record reflects that, at the time of the initial investment in February 2013, [REDACTED] served as the NCE's president and it also had two compensated employees, [REDACTED] and [REDACTED]. Therefore, before

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<sup>2</sup> The appeal brief states that the Petitioner's wife "owned and sold two properties in 2004," without providing information or documentation regarding the sale dates of either property.

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the Petitioner's investment, at least two paid positions existed in the entity that became the NCE.<sup>3</sup> The Petitioner indicated that the NCE has not yet created a sufficient number of jobs to meet the regulatory requirements, and that he is relying on the business plan to show the need for at least 10 qualifying employees. While the initial business plan called for 14 jobs within the NCE, the Petitioner later submitted an amended business plan, dated July 10, 2015, projecting only a total of 11 full-time positions by the third quarter of 2017 to operate the business.

The Petitioner offered evidence relating to the NCE's employment prior to his investment, including IRS Forms W-2, Wage and Tax Statements, photocopies of payroll checks, and employee paystubs. The Petitioner did not indicate or document the number of hours each employee worked per week. This information is pertinent to the Petitioner's eligibility because any existing full-time positions do not count as jobs created by his investment.<sup>4</sup> *Matter of Hsiung*, 22 I&N Dec. 201, 204-05 (Assoc. Comm'r 1998).

While the most recent business plan projects 11 employees total, at least two positions existed at the NCE prior to the Petitioner's investment. Accordingly, the plan reflects the creation of only nine positions, not the 10 required. Without additional evidence relating to the preexisting employment at the NCE, specifically whether they were full- or part-time, the Petitioner has not met his burden to establish that 10 new jobs will be created by his investment.

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not established the lawful source of all of the funds he invested in the NCE, nor has he demonstrated sufficient job creation within the NCE.

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, the Petitioner has met that burden. Accordingly, we will dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of E-V-G-*, ID# 18020 (AAO Aug. 24, 2016)

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<sup>3</sup> It is not clear from the record whether [REDACTED] was a paid employee of the company.

<sup>4</sup> Based on each employee's pay immediately before the Petitioner's investment, it appears that both [REDACTED] and [REDACTED] were full-time employees.