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

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

MATTER OF Y-Z-

DATE: AUG. 25, 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 financing of development projects in [REDACTED] through a U.S. Citizenship and Immigrations Services designated regional center, [REDACTED]. See Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5). This fifth preference employment based 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, concluding that the Petitioner had not demonstrated an investment of her own capital. Specifically, he found she did not establish her equity in property that secured the mortgage from which the investment derived.

The matter is now before us on appeal. In her appeal, the Petitioner submits additional evidence and maintains that the Chief erred in looking at the equity interest because the investment was cash, not indebtedness, and because the mortgage, the Petitioner's mother, gifted the funds to her.

Upon *de novo* review, we will sustain 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. 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

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<sup>1</sup> 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.

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).

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

*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, personal, or

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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 petition is based on a \$500,000<sup>2</sup> investment in [REDACTED] the new commercial enterprise (the NCE) affiliated with the [REDACTED] regional center. Initially, the Petitioner explained that the invested funds derived from a gift from her parents, which in turn constituted the proceeds of a mortgage on property she and her mother jointly own. The Petitioner documented the purchase of the property in 1999 for 805,258 Renminbi (RMB). In December 2013, the Petitioner's mother, [REDACTED] borrowed RMB 3,400,000 (\$554,400)<sup>3</sup> by taking out a mortgage with the [REDACTED]. Around that time an appraisal valued the property at RMB 5,246,000. The guaranty lists the jointly owned property as security for the mortgage. According to a contemporaneous agreement the Petitioner offers on appeal, she consented to the mortgage. In January 2014, [REDACTED] executed a statement recounting the ownership of the property and mortgage details and agreeing to "relinquish all control of the funds proportion under my name to my daughter . . . for her exclusive control and disposition, free from all restrictions." The record traces the path of funds from [REDACTED] to the Petitioner, to several individuals agreeing to serve as conduits for the funds, back to the Petitioner's [REDACTED] account, and finally to the NCE.

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<sup>2</sup> The minimum investment amount is \$500,000 as the Petitioner has documented that the NCE is principally doing business in a targeted employment area. 8 C.F.R. § 204.6(f).

<sup>3</sup> U.S. dollar amount calculated at [www.oanda.com/currency/converter](http://www.oanda.com/currency/converter), accessed August 2, 2016, and incorporated into the record of proceedings.

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The sole issue is whether the Petitioner invested her own funds such that she placed her assets at risk.

The Chief concluded that the Petitioner had not established that her share of the property securing the mortgage amounted to at least \$500,000 such that she had placed that amount of her own assets at risk. As noted on appeal, however, her mother obtained the mortgage and relinquished all interest in her proportion of those funds to the Petitioner. These gifted funds are the Petitioner's personal assets. As she transferred the gifted funds to the NCE, the Petitioner has placed sufficient funds at risk.

### III. CONCLUSION

The Petitioner has placed at risk the requisite amount of lawfully obtained capital in a new commercial enterprise that will benefit the United States economy and create at least 10 full-time positions for qualifying employees. Therefore, the Petitioner has met the burden of proof necessary to establish eligibility for the benefit sought. Sections 203(b)(5), 291 of the Act.

**ORDER:** The appeal is sustained.

Cite as *Matter of Y-Z-*, ID# 18021 (AAO Aug. 25, 2016)