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

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

MATTER OF Y-G-

DATE: JULY 11, 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 an investment in the construction of a hotel, the project of a U.S. Citizenship and Immigrations Services (USCIS) 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 Immigrant Investor Program Office (IPO) Chief denied the petition. The Chief determined that the Petitioner had not established that the funds she invested from a loan were secured by assets that she owned.

The matter is now before us on appeal. On appeal, the Petitioner asserts that the Chief misinterpreted the law and that the Petitioner invested lawfully obtained loan proceeds received as a gift.

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

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<sup>1</sup> The regional center authority 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 concept of the regional center is to encourage immigrant investment in a range of business and economic development prospects within designated regional centers. This regional center model can offer an immigrant investor already-defined investment opportunities, thereby reducing the immigrant investor's responsibility to identify acceptable investment vehicles.

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 regulation at 8 C.F.R. § 204.6(e) defines capital as:

*Capital* means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided that 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. All capital shall be valued at fair market value in United States dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b)(5) of the Act.

The regulation at 8 C.F.R. § 204.6(j)(2) provides the capital investment requirements:

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. Such evidence may include, but need not be limited to:

- (i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;
- (ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices, sales receipts, and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

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- (iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading, and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;
- (iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or
- (v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

The regulation at 8 C.F.R. § 103.2(b) provides general filing requirements associated with establishing eligibility for the benefit at the time the petition is filed:

*Demonstrating eligibility.* An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication.

Documents in a foreign language must be certified according to the regulation at 8 C.F.R. § 103.2(b)(3):

*Translations.* 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.

## II. ANALYSIS

### A. Introduction

The record reflects the Petitioner invested \$500,000 into [REDACTED] the new commercial enterprise (the NCE). As the NCE is within a targeted employment area, the required amount of capital in this case is \$500,000.<sup>2</sup> The Chief determined that the Petitioner had not established that the funds she invested from a loan were secured by assets that she owned. The Petitioner filed an appeal with USCIS submitting a brief with additional evidence. We issued a combined request for evidence

<sup>2</sup> The regulation at 8 C.F.R. § 204.6(f) explains that the minimum investment amount is generally \$1,000,000, but may be adjusted down to \$500,000 if the investment is in a targeted investment area.

(RFE) and notice of intent to dismiss the appeal regarding the Petitioner's ownership of the asset securing the loan and translations of foreign language documents.

As part of our *de novo* authority, we have reviewed the entire record of proceedings before us. For the reasons discussed below, we find that the Petitioner did not establish she has made a qualifying investment that places her own funds at-risk.

## B. Qualifying Capital Investment

### 1. Petitioner's Ownership of Asset Backing Mortgage

The Petitioner and her spouse purchased property in China in 2005 and subsequently, by a "gift deed," transferred it to their son in 2012. In 2014 the Petitioner's son mortgaged the property. It is the funds from this mortgage that the Petitioner utilized to invest in the NCE. The Chief determined that as the property securing the loan was not owned by the Petitioner, she had not established that her investment funds qualify under the definition of capital at 8 C.F.R. § 204.6(e).

The Petitioner asserts the Chief erred in his interpretation of the regulation at 8 C.F.R. § 204.6(e), quoting the regulation as stating: "*Petitioner must show that he/she placed his/her own capital at risk, i.e. that he or she was the legal owner of the invested capital.*" The definition of capital at 8 C.F.R. § 204.6(e), quoted above, does not contain this language. The Petitioner also relies on *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998), for the same quote. A footnote in *Soffici* reads: "A petitioner must also establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are his own. The petitioner has already conceded that the funds lent to Ames are not his; the funds belong to his father and must be repaid."

At the time the Petitioner filed this petition, she stated that she applied for a personal loan with her son as mortgagor on the loan. The loan instrument lists the Petitioner as the borrower, and her son as the mortgagor. In response to the Chief's notice of intent to deny the petition (NOID), the Petitioner maintained that she was in full control of the property used to secure the loan, and that the Chief recently changed IPO's policy regarding investments that derive from a loan.

Accompanying the Petitioner's response to the Chief's NOID, she submitted a declaration from her son. Within this statement, the Petitioner's son affirms:

- Both he and his father were registered as the property's owners;
- His parents gifted the property to him; and
- According to the ownership registration and certificate, his parents still have the full right of disposition on the property.

Regarding her son's statement that his parents have the full right of disposition of the property, the record lacks corroborating evidence. The Petitioner cannot meet the burden of proof simply by claiming a fact to be true, without supporting documentary evidence. *Soffici*, 22 I&N Dec. at 165;

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see also *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner must support her claims with relevant, probative, and credible evidence. See *Chawathe*, 25 I&N Dec. at 376.

The Petitioner explains that her entire family will benefit from her success in this investment program, “which means that they are all acting in concert, thus providing that under the Petitioner’s decision by using a gifted property to her Son [*sic*] shows that she is in full control and warranted the authority over the disposition of the subject property.” The Petitioner continues, stating that “the title of the property might not be in her name but it does not negate the fact that she, her husband and her son ALL co-own the property used as collateral.” None of the documentation, to include the loan contract, the tax materials, or the property registration instruments, reflects the Petitioner or her spouse as a co-owner on the mortgaged property. As such, the record does not confirm the proclamation that the Petitioner and her spouse have full rights associated with the property.

The Petitioner contends that even though the property was registered to her son, she maintains full control over the property and remains personally and primarily liable for its disposition. As noted above, the evidence on record does not corroborate this contention. The Petitioner is not listed under the property registration nor does she explain why her son was included on the loan documentation. Under the facts as presented, the Petitioner’s son has, in effect, co-signed on a loan for her, using the property he owns as collateral. Such a scenario does not demonstrate that the Petitioner bears any ownership or control over the collateral.

In her appeal brief, the Petitioner cites to Chinese contract law referring to co-ownership of property in a situation unrelated to, and different from, her own. In the example she provided, the analysis focuses on “co-ownership by shares” and “co-ownership in common.” However, the Petitioner has not submitted evidence that she was a co-owner, either by shares or in common with any other person, on the date her son’s property was mortgaged. Her statements contradict other documents in the record indicating that she and her husband gave their interest in the property to their son. The Petitioner must resolve any material inconsistencies in the record by competent, objective evidence. Unresolved material inconsistencies may lead the AAO to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Another document interpreting Chinese civil law indicates that gifts are effective upon delivery. Nonetheless, the only beneficence recorded at the time the Petitioner filed this petition was the December 14, 2012, conveyance of property from the Petitioner and her spouse to their son. The Deed of Gift states that the Petitioner and her spouse “would like to give their share in the house property to” their son. All parties to the transaction signed the deed and their signatures were notarized. Therefore, any previously co-owned shares in the property were then released to the Petitioner’s son. A [REDACTED] Certificate of Real Estate Ownership, dated December 28, 2012, identifies the Petitioner’s son as the sole owner of the property.

The Petitioner first mentioned her son’s generosity involving the loan proceeds in the appeal brief. Information included with the initial filing only mentioned a monetary transfer from the Petitioner’s son without any discussion that he made a present of the funds to his mother. The post-adjudication

characterization of the nature of the monetary arrangement, in this instance from a loan secured by a mortgage to a gift of the loan proceeds, would constitute a material change. As initially presented, the Petitioner did not own the asset which served as collateral for the loan. By now claiming the loan proceeds were given to her, the Petitioner would not have to show that the assets backing the loan were her own. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

The regulatory definition of "invest" at 8 C.F.R. § 204.6(e) precludes a contribution of capital in exchange for a note, bond, convertible debt, obligation or other debt arrangement. The Petitioner's son owns the mortgaged property, and even if he offered the mortgage proceeds to the Petitioner as a gift, the loan contract names the Petitioner as the party responsible for repaying the debt. After the Petitioner repays the full mortgage debt, her son remains the property owner. Were the Petitioner to fail to repay the loan, the bank would take ownership of the property from the Petitioner's son, not from her. In order for invested capital that derives from a loan to the Petitioner to be her own funds, the loan must be secured by the Petitioner's assets. 8 C.F.R. § 204.6(j)(2)(v). Without such a security associated with the loan, the Petitioner's investment cannot be considered to be at risk as required by the regulation. *Id.* at (j)(2). Therefore, even if the Petitioner documented that her son gifted the loan proceeds to her, she is responsible for repayment of the loan. As she does not own the property mortgaged to obtain the invested funds, she cannot demonstrate that she has invested or is actively in the process of investing the required amount of capital. Such a scenario constitutes a debt arrangement precluded by the regulatory definition of invest. 8 C.F.R. § 204.6(e).

## 2. Policy Change

Regarding a change in agency policy, the Petitioner indicated that USCIS issued a written summary of an April 2015 stakeholder call-in conference in which the agency amended its policy relating to the ownership of collateral used as a basis for a loan to invest in this entrepreneurial program. The Petitioner also faults USCIS for creating a new rule without adhering to the notice and comment period in violation of the Administrative Procedure Act. During an April 22, 2015, EB-5 Telephonic Stakeholder Engagement, IPO's Deputy Chief explained that proceeds from a third-party loan must meet the requirements placed upon indebtedness by 8 C.F.R. § 204.6(e) to qualify as the petitioner's capital. The IPO Deputy Chief's remarks aimed to assist stakeholders in understanding the relevant statutory and regulatory requirements of eligibility for the immigrant investor classification.<sup>3</sup> We agree that this is the correct reading of the regulation and find that the IPO Deputy Chief's statement only clarified existing policy.

While the Contract of Personal Loan document signed in September 2014 does reflect that the Petitioner will repay the debt, the record lacks evidence that the indebtedness is secured by assets the

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<sup>3</sup> The referenced statement from the Deputy Chief, IPO, is publicly available on the USCIS website. See [https://www.uscis.gov/sites/default/files/USCIS/Outreach/PED\\_IPO\\_Deputy\\_Chief\\_Julia\\_Harrisons\\_Remarks.pdf](https://www.uscis.gov/sites/default/files/USCIS/Outreach/PED_IPO_Deputy_Chief_Julia_Harrisons_Remarks.pdf), accessed on February 5, 2015.

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Petitioner owns. The loan is secured by an asset owned by the Petitioner's son. The Petitioner states on appeal that USCIS's "extension of the restrictions on indebtedness when used as an investment in a new commercial enterprise to a petitioner's separate and independent third-party loan agreement furthers no statutory objective." We do not agree that requiring loan proceeds to be secured by the Petitioner's own assets serves no statutory objective. The regulation at 8 C.F.R. §§ 204.6(j)(2)(v) and (e), under the definition of capital, both require that such proceeds must be the Petitioner's or secured by the Petitioner's own assets.

In response to our combined RFE and notice of intent to dismiss the appeal, the Petitioner provided a copy of Chinese law as it relates to property ownership and website printouts regarding real estate ownership and transactions in [REDACTED]. The Petitioner did not offer any evidence to sufficiently address or overcome our concerns that she did not own any portion or share of the mortgaged property to establish that the asset securing the loan was her own.

### 3. Translations

We noted in our combined RFE and notice of intent to dismiss that the Petitioner had filed a number of foreign language documents but had not provided the proper translations as required under the regulation at 8 C.F.R. § 103.2(b)(3). This regulation provides "[a]ny 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." Specifically, the blanket certification on record did not identify the translations it was certifying, and the translation company's stamp that appeared on the certification did not appear on any of the translations. The blanket certification therefore was not probative evidence that the certification related to all or any of the translations in this record of proceeding. Without properly certified translations, the foreign language items have diminished evidentiary or probative value and we requested that for each foreign language document the Petitioner previously submitted, she provide probative evidence that the translator has certified the translation in compliance with the regulation.

In response the Petitioner offers some foreign language documents with a proper translator's certification. However, she did not submit a properly certified translation for every document in a foreign language. For example, the blanket certification accompanied her son's statement submitted in response to the Chief's NOID. In response to our notice, the Petitioner provided this same statement from her son but the translator's certification is not signed or dated. This document, in addition to other similar foreign language documents on record, is not probative evidence.

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that her investment in the NCE meets the definition of capital as her indebtedness is not secured by assets that she owns.

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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 not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of Y-G-*, ID# 15921 (AAO July 11, 2016)