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

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

MATTER OF B-L-

DATE: JULY 28, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner seeks classification as an immigrant investor based on an investment in [REDACTED] the new commercial enterprise (the NCE) that plans to finance the development and operation of an ethanol production facility. See Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5). A United States Citizenship and Immigrations Services (USCIS) designated regional center, [REDACTED], sponsors the project.<sup>1</sup> 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, Immigrant Investor Program Office (IPO), denied the petition. The Chief concluded that the Petitioner did not invest, and was not in the process of actively investing, in the NCE. He also found that she did not document the lawful source of funds she sent to the NCE. We dismissed her appeal, determining that she did not overcome either of the Chief's grounds for denial.

The matter is now before us on a motion to reconsider. In support of her motion, the Petitioner submits additional evidence. We will therefore adjudicate this matter as both a motion to reconsider and a motion to reopen. In support of her motion, the Petitioner maintains that she has shown her eligibility for the immigrant investor classification.

We will deny the motions.

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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.

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## 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 admission to the United States as a conditional permanent resident.

A motion to reconsider a decision must offer the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the earlier decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider is based on the existing record and the petitioner may not introduce new facts or new evidence relative to her arguments. A motion to reopen must state the new facts to be provided and to be supported by affidavits or other documentation. 8 C.F.R. § 103.5(a)(2). However, any new facts must relate to eligibility at the time the petitioner filed the petition. *See* 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A motion to reopen seeks a new hearing based on new materials, as opposed to a motion to reconsider which contests the correctness of the original decision based on the previous factual record. *Compare* 8 C.F.R. § 103.5(a)(2) and 8 C.F.R. § 103.5(a)(3).

## II. ANALYSIS

On motion, the Petitioner submits additional evidence, and maintains that she has shown by a preponderance of the evidence that she invested at least \$500,000 in the NCE, and documented the lawful source of her capital. The Petitioner has not demonstrated that we based our previous decision on an incorrect application of law or USCIS policy. We will therefore deny her motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3). In addition, the record, including materials that she offers on motion, does not establish the lawful source of the funds she sent to the NCE or show that she has invested or is actively investing her own capital in the NCE. We will thus deny her motion to reopen.

### A. Lawful Source of Invested Funds

Previously, we concluded that the Petitioner did not document the complete path of her funds, and thus did not demonstrate that the capital came from a lawful source. *See Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm'r 1998); *see also Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998). On motion, the Petitioner acknowledges the requirement of demonstrating the complete path of her funds, and presents additional evidence, including a July 2013 [REDACTED] Wire Transfer Record, and her December 2015 statement. The record, containing additional documentation she has offered on motion, does not illustrate the lawful source of the \$539,000 she remitted to the NCE's [REDACTED] escrow account.

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Initially, the Petitioner did not explain the source of the funds she sent to the NCE. She then stated that the \$539,000 came from her spouse, who had sold real property for 3,000,000 Renminbi (RMB) in 2009, and received 800,000 RMB in consulting fees from [REDACTED] in February 2013. She later acknowledged that she could not “locate original property documents” or substantiate his ownership of the real property. Instead, the Petitioner indicated that her investment funds derived from her spouse’s sale of [REDACTED] a company she claimed he owned. As supporting evidence, she offered an October 25, 2010, “Agreement on Cooperation and the Transfer of Ownership,” and bank records for April 2013 and June 2013.

Notwithstanding the Petitioner’s statements, she has not shown that her spouse owned [REDACTED] such that he had the authority to sell it. In her response to the Chief’s notice of intent to deny the petition, the Petitioner stated that her spouse founded [REDACTED] in 2002. According to [REDACTED] 2007 Business License, however, her spouse served as the company’s representative, while [REDACTED] was its “Stock holder (founder).” The Petitioner has not established that as a representative, her spouse had an equity interest in the business, which he could sell. Moreover, the 2007 Business License noted that the “capital registered” was “three hundred thousand dollars.” Even assuming the Petitioner’s spouse was [REDACTED] founder and owner, the Petitioner has not proven that he obtained the \$300,000 invested capital through lawful means. In short, the record does not demonstrate that the Petitioner’s spouse has ever owned [REDACTED] such that he could have sold it to finance the Petitioner’s investment in the NCE. Furthermore, the Petitioner has not documented the lawful source of the \$300,000 that her spouse may have invested in the business.

Moreover, the record includes inconsistent evidence on when the Petitioner’s spouse sold [REDACTED]. According to the bank records, the Petitioner’s spouse received 5,000,000 RMB on April 24, 2013, from [REDACTED] and an additional 5,000,000 RMB from him on April 25, 2013.<sup>3</sup> We noted in our prior decision that 10 million RMB was approximately \$1,593,840 in April 2013. An “Agreement on Cooperation and the Transfer of Ownership,” indicated that her spouse sold [REDACTED] on October 31, 2010, two and a half years before he received the 10 million RMB remittances in April 2013. This 2010 agreement also discussed a 10 million RMB loan that the Petitioner’s spouse had to repay “before the end of December 2012.”

Based on the evidence in the record, including the 2010 “Agreement on Cooperation and the Transfer of Ownership,” we concluded that the Petitioner did not establish her spouse sold [REDACTED] in 2013. We further noted that the Petitioner did not explain why in April 2013, her spouse received proceeds of a sale completed two and a half years earlier, or proceeds of a loan that had a repayment date at least three months earlier.

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<sup>2</sup> [REDACTED] is the “controlling holder” of [REDACTED] and signed the “Agreement on Cooperation and the Transfer of Ownership” on behalf of the company.

<sup>3</sup> The English translation reflected that the Petitioner’s spouse received 500,000 RMB on April 24, 2013, and 500,000 RMB on April 25 2013. The original Chinese document, however, showed two transactions of 5,000,000 RMB, totaling 10 million RMB.

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On motion, the Petitioner offers no explanation. Instead, she maintains that, contrary to the information provided in the “Agreement on Cooperation and the Transfer of Ownership,” her spouse sold [redacted] in 2013, not in 2010. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)); see also *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner must support assertions with relevant, probative, and credible evidence. See *Chawathe*, 25 I&N Dec. at 376.

The Petitioner further claims that “[t]he technical parsing of the sale’s contract for [her spouse’s] company, which included a statement about [him] repaying a loan, is of [his] concern and does not diminish the fact that the sale’s funds were lawful and available to [the Petitioner], who then acquired her capital from [her spouse’s] sale to invest.” We disagree. We do not examine the agreement to simply “pars[e]” the details of the sale of [redacted]. Rather, we review the document, and other evidence, to determine if the Petitioner has shown the lawful source of her investment capital, as required under the regulation and controlling precedent decisions. See 8 C.F.R. § 204.6(j)(3); *Izummi*, 22 I&N Dec. at 169; *Soffici*, 22 I&N Dec. at 165. We conclude that she has not.

Assuming that the Petitioner’s spouse had the authority to sell [redacted] in 2010, and sold it for 10 million RMB, the record lacks bank documents verifying that at least 3,310,000 RMB of the sale proceeds remained in his account as of July 2013. On motion, the Petitioner files a “[redacted] Wire Transfer Record,” showing that on July 4, 2013, her spouse remitted 3,310,000 RMB, approximately \$535,416,<sup>4</sup> to [redacted] whom the Petitioner references as her currency exchange “conduit.” The Petitioner maintains that after receiving these funds, [redacted] sent \$539,000 to the NCE on the Petitioner’s behalf.<sup>5</sup> The Petitioner, however, has not presented verification, such as bank transaction records, illustrating that at least 3,310,000 RMB remained in her spouse’s account before his July 2013 remittance to [redacted]. As discussed in *Izummi*, “funds in bank accounts can easily be dissipated.” 22 I&N Dec. at 192. Without evidence verifying that at least 3,310,000 RMB remained in the Petitioner’s spouse’s account, the Petitioner has not shown that the funds remitted to [redacted] derived from the purported 2010 sale of [redacted]. Moreover, the Petitioner has not demonstrated that the 3,310,000 RMB was equivalent in value to the \$539,000 [redacted] sent to the NCE on her behalf.

The Petitioner has offered insufficient evidence showing that the 10 million RMB her spouse received in 2013 were the sale or loan proceeds discussed in the 2010 “Agreement on Cooperation and the Transfer of Ownership.” There was an extensive period of two and a half years between the Petitioner’s spouse’s sale of [redacted] and his receipt of the proceeds associated with the sale. Neither the Petitioner nor any other documents in the record explained this prolonged lapse of time. Without additional

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<sup>4</sup> See <http://www.oanda.com/currency/converter/>, accessed on May 24, 2016, and incorporated into the record of proceedings.

<sup>5</sup> On January 27, 2015, after eliminating its escrow department, [redacted] returned \$539,000 to [redacted] who then sent \$539,000 to the Petitioner on February 9, 2015. Two days later, on February 11, 2015, the Petitioner transferred \$539,000 to the NCE’s [redacted] escrow account.

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corroborating documentation, the Petitioner has not illustrated by a preponderance of the evidence why her spouse received 10 million RMB in 2013 or that the 10 million RMB was connected to the sale of [REDACTED]. Consequently, the Petitioner has not demonstrated that her \$539,000 investment capital derived from funds her spouse lawfully obtained or owned.

As the Petitioner has not documented the full path of the funds, she has not proven by a preponderance of the evidence that she lawfully obtained the \$539,000 she sent to the NCE. Accordingly, she has not demonstrated the lawful source of the investment capital as required under 8 C.F.R. § 204.6(j)(3).

#### B. Investment of Capital

In our previous decision, we found that the Petitioner did not demonstrate she invested, or was in the process of actively investing, at least \$500,000 of her own funds in the NCE. We concluded that she did not show the funds she transmitted to the NCE in February 2015 were her own assets. We also noted that the evidence she offered to illustrate her actual investment in the NCE contained inconsistent information, which she did not explain or reconcile.

On motion, the Petitioner offers documents from the NCE and [REDACTED]. These materials, along with previously submitted evidence, show that she sent \$539,000 to the NCE's [REDACTED] escrow account in February 2015. The Petitioner, however, must establish that she owned the investment capital. As discussed above, she has not demonstrated that either she or her spouse owned the funds she wired to the NCE. Accordingly, she has not illustrated that she invested, or was in the process of actively investing, at least \$500,000 of her own funds in the NCE. *See* 8 C.F.R. § 204.6(e), (j)(2); *see also Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm'r 1998) (a petitioner must establish that she is the legal owner of the capital invested).

### III. CONCLUSION

The Petitioner has not demonstrated that we based our previous decision on an incorrect application of law or USCIS policy. We will therefore deny her motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3). We have also considered the evidence offered on motion as a request to reopen our prior decision. We evaluated this evidence, together with previously filed documentation, and conclude that the Petitioner has not shown her eligibility for the immigrant investor classification. We will thus deny this motion to reopen. *See* 8 C.F.R. § 103.5(a)(2).

The motions will be denied 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, the Petitioner has not met that burden. Accordingly, we will deny the motions.

**ORDER:** The motion to reconsider is denied.

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**FURTHER ORDER:**       The motion to reopen is denied.

Cite as *Matter of B-L-*, ID# 17132 (AAO July 28, 2016)