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

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

MATTER OF Z-W-

DATE: MAY 10, 2016

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

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

The Petitioner, an individual, seeks classification as an immigrant investor. *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, Immigrant Investor Program Office, denied the petition. After issuing a request for evidence (RFE) and reviewing the Petitioner's response, the Chief found that she had not: (1) shown the lawful source of the funds she wired to [REDACTED], the new commercial enterprise (NCE); and (2) established that the NCE met the job creation requirements.

The matter is now before us on appeal. In her appeal, the Petitioner submits a brief and additional evidence. She maintains that the Chief erred in denying her petition, because (1) she has shown the lawful source of her funds; and (2) the NCE's Business Plan establishes that it meets the employment creation requirements.

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. 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

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- (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).

## II. ANALYSIS

The record supports the Chief's findings that the Petitioner has not demonstrated the lawful source of the funds she wired to the NCE, and that the Business Plan and the "Supplements to the Business Plan of [the NCE]" are insufficient to show that the NCE meets the job creation requirements. In addition, the Petitioner has not established that at the time she filed the petition, she placed at least \$1,000,000 at risk for the purpose of generating a return. Accordingly, we will dismiss the appeal.

### A. Lawful Source of Funds

The regulations at 8 C.F.R. § 204.6(j) and (e) provide that a petitioner must show her investment funds are lawfully obtained, and that assets "acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital" under the Act. In addition, a petitioner cannot demonstrate the lawful source of funds by submitting bank letters or statements documenting the deposit of funds. *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). Without evidence of the complete path of the funds, the petitioner cannot meet his or her burden of establishing that the funds are his or her own funds. *Izummi*, 22 I&N Dec. at 195.

In this case, the [REDACTED] showed that on April 23, 2012, the NCE received \$1,000,000 from the Petitioner.<sup>1</sup> The Petitioner has consistently stated that the funds derived from dividends she collected from [REDACTED]. According to corporate documents, she contributed 1,650,000 renminbi (RMB) for 33 percent of the equity in [REDACTED].<sup>2</sup> The Notices of Bonus reflected that between 2006 and February 2012, she received 10,539,300 RMB in dividends, which was approximately \$1,672,840.<sup>3</sup> The bank statements for the Petitioner's RMB account displays deposits of these amounts from [REDACTED]. The Petitioner submitted statements from 21 individuals affirming that they received from the Petitioner approximately 300,000 RMB each between March 15, 2012, and March 22, 2012, and that they then transferred those funds to either the Petitioner's [REDACTED] account or that of [REDACTED]. While the Petitioner verified the transfers from these individuals to these two [REDACTED] accounts, she did not corroborate the path of funds between her RMB account that received the dividends to these individuals. Notably, the statement for the

<sup>1</sup> The credit advice suggests that there are several account holders of the account from which the funds originated.

<sup>2</sup> The documents show that in 2006, the Petitioner owned eight percent of [REDACTED]. Her equity interest was subsequently increased to 16 percent in 2008 and 33 percent in 2009.

<sup>3</sup> See <https://www.oanda.com/currency/converter/>, accessed on March 29, 2016, and incorporated into the record of proceeding.

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Petitioner's RMB account shows only two debits in amounts around 300,000 RMB between those dates in March 2012.

On appeal, the Petitioner maintains that she contributed 1,650,000 RMB to [REDACTED] between 2002 and 2008 with funds from her spouse, [REDACTED]. Although the evidence, including [REDACTED] Income Certificates, indicates that his income could have financed the Petitioner's investment in [REDACTED], the record does not show that he actually did. Specifically, the Petitioner has not submitted any proof, such as bank records, demonstrating that [REDACTED] saved a portion of his earnings or that the Petitioner received any money from him during the relevant years. The Petitioner has also not offered other corroboration, such as a statement from [REDACTED], affirming that he transferred 1,650,000 RMB to her. Without such confirmation, the Petitioner has not documented the lawful source of the 1,650,000 RMB she invested in [REDACTED], the dividends she received from the company, or the complete path of the funds she wired to the NCE.

Moreover, as the Chief noted in his decision, in her RFE response, the Petitioner stated that her investment in [REDACTED] "mainly came from the income of [the] Petitioner's husband . . ." This affirmation indicated that at least some of the funds came from elsewhere. On appeal, the Petitioner has not addressed this issue or submitted additional evidence relating to other sources of funds. In light of the above, the Petitioner has not established the lawful source of the funds she wired to NCE in April 2012.

## B. Job Creation

The regulation at 8 C.F.R. § 204.6(j)(4)(i) lists the evidence that a petitioner must submit to verify employment creation, including photocopies of relevant tax records, Form I-9s, or other similar documents for 10 qualifying employees, if such employees have already been hired following the establishment of the NCE; or a copy of a comprehensive business plan showing the need for no fewer than 10 qualifying employees. *See Ho*, 22 I&N Dec. at 213. A comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products or services, and its objectives. *Id.* Elaborating on the contents of an acceptable business plan, *Ho* states that the plan should contain a market analysis, the pertinent processes and suppliers, marketing strategy, organizational structure, personnel's experience, staffing requirements, timetable for hiring, job descriptions, and projections of sales, costs and income. The decision concludes: "Most importantly, the business plan must be credible." *Id.*, 22 I&N Dec. at 213.

The Petitioner submitted documentation showing that the NCE hired some but not at least 10 full-time employees. As such, we review the Business Plan and its Supplements to determine if the information presented is comprehensive, credible, and sufficient to meet the job creation requirements. We find that it is not. The Business Plan provided that the NCE will export wine from the United States to China, and import lead-acid batteries from China to the United States. The Business Plan indicated that the NCE would hire three sales executives and a warehouse assistant between 2013 and 2014. Its Internal Revenue Service (IRS) Forms 1120, U.S. Corporation Income Tax Returns, reflected that before 2013, the NCE did not have any employees; and that between

August 2013 and July 2014, it spent \$7,868 on “Salaries and wages.” The IRS Forms W-2, Wage and Tax Statements, confirmed that the NCE had one employee in 2013 and two employees in 2014. This information contradicts the Business Plan that projected a total of three full-time employees between 2013 and 2014.

While the difference between one and two employees is small, the Business Plan provided that the NCE would hire an additional eight full-time employees between 2014 and 2015. The record, however, does not support this information. The Petitioner submitted IRS Form W-2, representing that the NCE hired two employees in 2014. The Earnings Statements and payroll documents for 2015 reflected that in February and March 2015, the NCE had a total of two employees, less than the 11 that the Business Plan projected. In her RFE response, the Petitioner filed “Supplements to the Business Plan of [the NCE].” While this exhibit indicates that the company is better able to offer estimates now that it is operating, it concludes only that based on its assets and sales income, “the NCE must survive to continue to operate and is financially able to hire 10 full-time employees in the coming two years.” The supplement does not include a new hiring plan to support this deduction.

In addition, the Petitioner has not shown that the Business Plan and its Supplements are credible. According to the pro forma profit and loss statement included in the Business Plan, in year one (June 2013 through May 2014), the NCE’s projected sales were \$1,500,000; and projected cost of sales was \$800,000. The NCE’s 2013 tax return, which related to the tax year from August 2013 through July 2014, however, reflected that the NCE’s gross sales were \$347,330, and cost of goods sold was \$248,618. The actual figures reported in the tax return were substantially lower than the projection referenced in the Business Plan. The Petitioner has the burden to clarify inconsistent evidence with independent, objective documentation that resolves the discrepancy. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the Petitioner has not explained or offered materials resolving the inconsistencies beyond its affirmation that better estimates are now possible due to the commencement of business operations and that the Petitioner’s inability to work in the United States has impacted the business’ operations. Given the additional inconsistencies discussed below, these clarifications are insufficient.

Specifically, the Business Plan and its Supplements contain conflicting information on whether the NCE would operate a warehouse. The Business Plan indicated that the NCE would “open at least two operation locations/warehouse (or distribution centers)” within three to five years; hire two warehouse assistants and a shipping clerk within the first two years; and spend \$40,000 on “Fixture for office & warehouse.” The Supplements to the Business Plan, however, said that the NCE “is doing the trade business like a middle agent” and therefore “does not need to have any inventory and the products are shipped directly to the buyers.” The Petitioner’s RFE response similarly referenced that the “NCE at this moment is doing the trading business as a trader, which means the NCE does not need to hold the inventory and then resell to the buyers, but directly ship the products to the end-buyers from the sellers.” The February 26, 2015, lease provides for two parking spaces, covers 1,191 usable square feet, and lists the permitted use as “consistent with the character of a first class office building.” As the job creation estimate presented in the Business Plan included warehouse

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positions, the Petitioner has not shown that in the absence of a warehouse, the NCE would nonetheless need no fewer than 10 full-time employees.

Finally, as the Chief pointed out, the Business Plan and its Supplements contained inconsistencies on the products and services that the NCE intended to offer. The Business Plan stated that the NCE would export wine from the United States to China, and import lead-acid batteries from China to the United States. The Supplements provided that the NCE entered into an “exclusive agreement with [redacted] [a company in China] to purchase their li-battery.” The February 11, 2015, Exclusive Purchase Agent Agreement, however, reflected that the NCE would serve as the Chinese company’s purchasing agent for “Li-battery separator materials” in Northern America, not that NCE would purchase the entity’s “li-battery” as referenced in the Business Plan Supplements. As the Chief noted, the Petitioner has submitted insufficient evidence confirming that the NCE has or will import lead-acid batteries to the United States, as contemplated in the Business Plan. Specifically, the record lacks information on pricing, potential suppliers, shipping or distribution of lead-acid batteries. On appeal, the Petitioner maintains that a change from importing batteries to exporting batteries is not a material change, especially in light of the time the petition has remained pending. It remains, however, that exporting battery components rather than importing batteries requires a different analysis in the business plan, which the Petitioner has not included. The Petitioner also has not filed any exhibits demonstrating that the NCE has obtained the necessary import/export licenses or permits, or proof that no such license or permit is needed to operate. In light of these issues, the Petitioner has not established the reliability or credibility of the Business Plan or its Supplements, or shown that the NCE needs or will need no fewer than 10 full-time employees. *See Ho*, 22 I&N Dec. at 213; 8 C.F.R. § 204.6(j)(4)(i)(B).

### C. Capital Placed at Risk

Although not raised by the Chief, we find the Petitioner has not demonstrated that she “has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk.” *See* 8 C.F.R. § 204.6(j)(2). The NCE’s bank statement for an account ending in 002 indicated that on April 27, 2012, four days after receiving a \$1,000,000 wire from the Petitioner, the NCE wired \$160,000 to [redacted]. The Petitioner has not shown that this wire constituted a legitimate business expense. The ending balance of the account on April 30, 2012, was \$841,139. The Petitioner has filed no additional bank record verifying that the NCE subsequently received an additional \$160,000 from the Petitioner. As such, the Petitioner has not established that she placed at least \$1,000,000 at risk in the NCE.

### III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that she is eligible for the immigrant investor classification. She has not submitted sufficient material establishing the lawful source of the funds she wired to the NCE, that the NCE meets the employment creation requirements, or that she has placed at least \$1,000,000 at risk in the NCE. The Petitioner, therefore,

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has not shown her eligibility pursuant to section 203(b)(5) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. The burden is on the Petitioner to show 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). The Petitioner has not met her burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of Z-W-*, ID# 16204 (AAO May 10, 2016)