



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

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

MATTER OF J-L-

DATE: DEC. 15, 2017

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

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

The Petitioner seeks classification as an immigrant investor pursuant to the Immigration and Nationality 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 (NCE) that will benefit the United States economy and create at least 10 full-time positions for qualifying employees. Foreign nationals may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (Appropriations Act), section 610, as amended.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish, as required, the lawful source of the Petitioner's invested funds.

On appeal, the Petitioner submits additional exhibits and asserts that the Chief did not sufficiently consider all of the evidence and applied the wrong standard of proof.

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 an NCE, which can be any lawful business that engages in for-profit activities. An immigrant investor may invest the required funds directly in an NCE, or invest through a regional center.¹ Regional centers apply for designation as such with USCIS. Designated regional centers identify and work with NCEs, which in turn are associated with a specific project, either taken on directly by the NCE or by one or more separate entities known as the "job creating entity." Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii).

¹ A regional center is an "economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e).

The invested capital must not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e) (defining capital). To show the lawful source of the capital, a petitioner must submit evidence such as foreign business and tax records or documentation identifying any other source(s) of funds. 8 C.F.R. § 204.6(j)(3). Bank letters or statements corroborating the deposit of funds, by themselves, are insufficient. *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). The record must trace the path of the funds back to a lawful source. *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.²

II. ANALYSIS

The Petitioner invested \$500,000³ in [REDACTED] the NCE, which is affiliated with the US Commercial Regional Center. The NCE proposes to fund the construction and management of two new commercial buildings in [REDACTED] California. The initial cover letter explains that the Petitioner obtained her funds through her 60.47 percent interest in [REDACTED]. She documented that company's financial position and its distributions of profits to her. The Chief concluded that she had not substantiated her contention that she gained her interest in that company through inheritance and assignments from other shareholders upon the death of her spouse. On appeal, she offered a stockholder agreement whereby she was allotted the shares of her late spouse and those of her brother and his wife. She also provided a death certificate for her spouse, a news article about his kidnapping and murder, a Letter of Certificate on Inheritance, and an explanatory letter from a lawyer in China. This evidence resolves all of the Chief's concerns.

In August 2017, we issued a request for evidence seeking transactional documentation tracing the final link in the path of funds from her daughter to her own account, information about her spouse's income prior to his 2004 investment in [REDACTED] and other clarifications pertaining to an increase in her capital account in 2012. In response, the Petitioner supplied bank statements corroborating the transfer to her account, demonstrated by a preponderance of the evidence that she sold her beauty salon to found [REDACTED] and clarified the source of the additional capital credited to her account in 2012. Accordingly, she has resolved our concerns as well as those of the Chief.

III. CONCLUSION

The Petitioner has now demonstrated the lawful source of her invested capital.

² These requirements confirm that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (holding that a petitioner had not established the lawful source of her funds because she did not designate the nature of all of her employment or submit five years of tax returns).

³ The Petitioner indicates that the NCE is located in a targeted employment area, and that the requisite amount of qualifying capital is downwardly adjusted from \$1,000,000 to \$500,000. *See* 8 C.F.R. § 204.6(f).

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ORDER: The appeal is sustained.

Cite as *Matter of J-L-*, ID# 854459 (AAO Dec. 15, 2017)