



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

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

MATTER OF D-Z-

DATE: JAN. 13, 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 under the 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. 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, section 610, as amended.

The Chief of the Immigrant Investor Program Office denied the petition. He concluded that the Petitioner had not documented the lawful source of the funds she invested in [REDACTED] the new commercial enterprise (the NCE).¹ Specifically, the Chief determined that the Petitioner did not show she and her spouse lawfully acquired the apartment that secured a 3,500,000 renminbi (RMB)² loan, the proceeds of which she invested in the NCE. In addition, the Chief concluded that the Petitioner presented fraudulent documents relating to the source of the funds she and her spouse used to purchase the property. The Chief therefore found that the Petitioner, by willfully misrepresenting a material fact, sought to procure admission into the United States or other benefit provided under the Act.

The matter is now before us on appeal. In support of her appeal, the Petitioner submits a brief and additional documentation. She maintains that the Chief erred in concluding she willfully misrepresented a material fact. She further states that the record sufficiently demonstrated that she and her spouse lawfully acquired the property that secured the 3,500,000 RMB loan.

¹ The Petitioner submitted documents showing that the NCE intended to lend up to \$100,000,000 to [REDACTED] for the renovation of [REDACTED] and [REDACTED] in [REDACTED] Nevada. The NCE is associated with [REDACTED] a USCIS designated regional center. In addition, the investment is within a targeted employment area. Accordingly, the minimum requisite investment amount is \$500,000. *See* 8 C.F.R. § 204.6(f).

² On May 24, 2013, the date the Petitioner received the loan proceeds, 3,500,000 RMB was approximately \$565,614. *See* <https://www.oanda.com/currency/convert/>, accessed on November 8, 2016, and incorporated into the record of proceedings.

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 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. Section 203(b)(5)(A) of the Act 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).

II. ANALYSIS

The Petitioner obtained a 3,500,000 RMB loan, and invested its proceeds in the NCE. She used an apartment that she and her spouse owned as collateral for the loan. The Petitioner stated that her spouse's accumulated income between 1997 and 2011 funded the purchase of the property.³ However, the Petitioner has presented fraudulent documents relating to her spouse's income. In addition, the Petitioner has not overcome the Chief's material misrepresentation finding, and has not documented the lawful source of the funds she and her spouse used to purchase the property. Consequently, she has not shown that she lawfully obtained the investment capital she remitted to the NCE.

A. Willful Material Misrepresentation

Section 212(a)(6)(C)(i) of the Act provides:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this [Act] is inadmissible.

³ The Petitioner and her spouse purchased the apartment for 2,680,000 RMB. They paid 804,000 RMB (approximately \$104,598) in 2007, and then paid off a 1,876,000 RMB (approximately \$244,061) mortgage in 2011. See <https://www.oanda.com/currency/converter/>, accessed on November 8, 2016, and incorporated into record of proceedings.

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A material misrepresentation requires that a petitioner willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 290 (BIA 1975). The term “willfully” means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. See *Matter of Tijam*, 22 I&N Dec. 408, 424-25 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979). To be considered material, the misrepresentation must be one which “tends to shut off a line of inquiry which is relevant to [a petitioner’s] eligibility, and which might well have resulted in a proper determination that he [or she] be excluded.” *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

For an immigration officer to find a willful and material misrepresentation in a visa petition proceeding, he or she must determine: (1) that a petitioner made a false representation to an authorized official of the United States government; (2) that the misrepresentation was willfully made; and (3) that the fact misrepresented was material. See *Matter of M-*, 6 I&N Dec. 149, 150-51 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324, 327 (BIA 1961); *Kai Hing Hui*, 15 I&N Dec. at 290.

In this case, the Petitioner has made a material misrepresentation. See *M-*, 6 I&N Dec. at 150-51; *L-L-*, 9 I&N Dec. at 327; *Kai Hing Hui*, 15 I&N Dec. at 290. The Petitioner submitted false documentation on the source of her spouse’s income. Specifically, she presented fraudulent documents that purportedly verified her spouse’s earnings from and ownership of [REDACTED] and [REDACTED].

As the Chief discussed in his decision, the Petitioner provided a Certificate of Employment from [REDACTED] indicating that between 2006 and 2009, the Petitioner’s spouse received 1,800,000 RMB⁴ in earnings and dividends that he earned while he working for and owning a 33 percent interest in the company. According to a joint declaration that both the Petitioner and her spouse signed, and an Individual Share Transfer Agreement, he sold his interest in [REDACTED] for 400,000 RMB in 2009.⁵

The information in the Certificate of Employment, the Individual Share Transfer Agreement, and the joint declaration, however, is inconsistent with the Individual Business License, which the Petitioner offered in support of her petition. The business license indicated that [REDACTED] “organizational form” was “individual operating,” and that since 2005, its sole operator had been [REDACTED]. As noted in the Chief’s decision, USCIS personnel learned from [REDACTED] that [REDACTED] “has always operated under the sole ownership of [REDACTED] and the company has never registered multiple owners.” Thus, the Individual Business License does not support the Petitioner’s statement that between 2006 and 2009, her spouse was a part owner, with 33 percent, of [REDACTED].

⁴ On April 18, 2009, the date of the Individual Share Transfer Agreement, 1,800,000 RMB was approximately \$263,058. See <https://www.oanda.com/currency/converter/>, accessed on November 15, 2016, and incorporated into record of proceedings.

⁵ On April 18, 2009, the date of the Individual Share Transfer Agreement, 400,000 RMB was approximately \$58,457.30. See <https://www.oanda.com/currency/converter/>, accessed on November 8, 2016, and incorporated into record of proceedings.

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On appeal, the Petitioner submits a letter from [REDACTED] confirming that [REDACTED] was an “individually-owned business enterprise.” [REDACTED] stated:

[T]here was no regulation regarding the enterprise’s type transformation of individually-owned business at that time, so the administration for industry and commerce was not able to make transformation registration for [REDACTED] which means that the only registered business operator on file was [REDACTED]

The Petitioner has not presented any evidence corroborating [REDACTED] statement that ownership changes did not require registration with the [REDACTED]. Unsubstantiated statements do not satisfy a petitioner’s burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

Moreover, [REDACTED] letter is inconsistent with the information contained in the Individual Business License. In his letter, [REDACTED] indicated the following: He “set up” [REDACTED] in September 2006, and was its “only registered business operator.” He allowed the Petitioner’s spouse to become [REDACTED] part owner in December 2006. In 2009, the Petitioner’s spouse sold his 33 percent interest to [REDACTED] then “transferred all the shares of [REDACTED] to [REDACTED] and changed in [*sic*] the registration. Since that, [REDACTED] was the only business operator of [REDACTED]

[REDACTED] statements conflict with [REDACTED] business license, which confirmed that [REDACTED] had been [REDACTED] sole operator since January 31, 2005, the date the license was issued. The Petitioner has not offered any government or business documentation showing that another person, such as [REDACTED] ever operated the company. The record thus does not support [REDACTED] statements that he “set up” the company in 2006, that [REDACTED] became the sole operator in or after 2013, or more importantly, that the Petitioner was at any time a part owner of [REDACTED]

On appeal, the Petitioner also submits a letter from [REDACTED] stating that “[REDACTED] was set up as an individually [*sic*] owned business enterpricse [*sic*] and the only operator on file was [REDACTED] [REDACTED] indicated that he purchased the Petitioner’s spouse’s 33 percent interest in [REDACTED] in 2009, and that after the purchase, he “began to actually operate business of [REDACTED] and get all shareholder’s right.” Neither the Individual Business License nor any other documentation in the record supports [REDACTED] statements that he or [REDACTED] was ever [REDACTED] operator. In addition, letters from [REDACTED] and [REDACTED] provide conflicting information on who operated [REDACTED] in or after 2009. Specifically, [REDACTED] letter states that [REDACTED] became the business’s sole operator; while [REDACTED] indicates that he, not [REDACTED] was the operator.

Moreover, as the Chief noted in his decision, the Petitioner has submitted inconsistent evidence on her spouse’s income from [REDACTED]. The Petitioner indicated that in June 2009, her spouse founded

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██████████ and owned 55 percent of the company. The Petitioner stated that her spouse received 4,500,000 RMB in salary and dividends between 2009 and 2013.⁶ According to an April 2009 Share Cooperation Agreement, four individuals owned the company, with the Petitioner's spouse owing 55 percent, and the remaining three individuals each owing 15 percent. The Petitioner, however, also presented a copy of ██████████ company profile, noting that ██████████ was one of its subsidiaries. This document, which provided that ██████████ owned, at least partially, ██████████ is inconsistent with the Petitioner's statements that her spouse jointly owned the business with three other individuals, and received salaried income and dividends of 4,500,000 RMB from it.

An immigration officer may deny a visa petition if a petitioner submits evidence that contains false information. *See* section 204(b) of the Act. In general, a few errors or minor discrepancies are not reason to question a petitioner's credibility. *See Spencer Enterprises Inc. v. United States*, 345 F.3d 683, 694 (9th Cir. 2003) (upholding our adverse credibility finding). However, if a petition includes serious errors and discrepancies, and a petitioner has not resolved those errors and discrepancies after USCIS provides him or her with an opportunity to rebut or explain, then the inconsistencies can lead us to conclude that the facts stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the petition. *Id.*

A misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by submitting evidence containing false information. *INS Genco Op. No. 91-39*, 1991 WL 1185150 (April 30, 1991). Here, the Petitioner's submission of the abovementioned misleading evidence, which she has not adequately rebutted or explained after afforded a chance to do so, constitutes a false representation to a government official.

In his decision, the Chief discussed the information and documentation noted above. On appeal, however, the Petitioner did not submit proof to overcome, fully and persuasively, this derogatory evidence. Although the Petitioner offered letters from ██████████ and ██████████ as explained, these letters are inconsistent with other documentation in the record. Thus, the Petitioner has not resolved the discrepancies of her spouse's ownership interest and earnings from ██████████ and ██████████ and has not established that the information submitted in support of the petition is true.

The record shows that the Petitioner willfully made the misrepresentation. She signed the petition, certifying under penalty of perjury that the petition and the submitted evidence are all true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). More specifically, the signature portion of the petition, at part 7, requires her to make the following affirmation: "I certify, under penalty of perjury under the laws of the United States of America, that

⁶ On May 26, 2013, the date of the ██████████ certificate discussing the Petitioner's spouse's earnings, 4,500,000 RMB was approximately \$726,811. *See* <https://www.oanda.com/currency/converter/>, accessed on November 15, 2016, and incorporated into record of proceedings.

this petition and the evidence submitted with it is all true and correct.” Her signed affirmation, made under penalty of perjury, establishes that she willfully and knowingly made the misrepresentation.

Finally, the evidence is material to the Petitioner’s eligibility. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. United States*, 485 U.S. 759 (1988). In the context of a visa petition, a misrepresented fact is material if the misrepresentation cuts off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of the petition. *See Ng*, 17 I&N Dec. at 537.

Here, the deceptive evidence the Petitioner submitted in support of the petition are material facts because they relate to the lawful source of funds that she invested in the NCE. Specifically, the Petitioner presented false documents to establish her spouse’s income, which purportedly financed the purchase of the apartment that she eventually used as collateral for the loan used to buy into the NCE. Lawful source of investment capital is an element she must demonstrate to show her eligibility. *See* 8 C.F.R. § 204.6(e), (j). The Petitioner has not provided competent independent and objective evidence to overcome, fully and persuasively, the Chief’s finding that she submitted falsified documentation on this eligibility requirement. Thus, we affirm the Chief’s determination that the Petitioner has willfully misrepresented a material fact. This finding of willful material misrepresentation shall be considered in any future proceeding where admissibility is an issue.

The Petitioner has compromised the credibility and reliability of her remaining documentation because she has not submitted independent and objective evidence to overcome the derogatory information discussed above. *See Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of a petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the petition. *Id.* at 591. Nevertheless, we will address the insufficiency of the Petitioner’s evidence to demonstrate her eligibility for the classification.

B. Lawful Source of Funds

A petitioner cannot demonstrate the lawful source of funds by submitting only 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). Instead, a petitioner must present evidence of the complete path of the funds to meet the burden of establishing that the funds are his or her own. *Izummi*, 22 I&N Dec. at 195.

Notwithstanding our finding of material misrepresentation, the Petitioner has not established her eligibility for the classification because she has not documented the lawful source of her investment funds. Specifically, she obtained a 3,500,000 RMB loan to invest in the NCE. However, the Petitioner has not demonstrated that she lawfully acquired the apartment that she used as collateral for the loan. Although the Petitioner indicated that her spouse’s income between 1997 and 2011 financed their purchase of the property, she has not submitted sufficient evidence, such as bank

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records, verifying that they accumulated sufficient capital through his earnings to purchase the property.

The Petitioner stated that her spouse earned 200,000 RMB working at [REDACTED] China, between 1997 and 2000, and received 1,200,000 RMB from [REDACTED] between 2000 and 2006. She also indicated that between 2006 and 2009, he made 1,800,000 RMB working for JLEC, and sold his interest in the business for 400,000 RMB. She then provided that he received 4,500,000 RMB between 2009 and 2013 from [REDACTED]. The record is insufficient to verify his receipt of any of the abovementioned amounts, or his capital investments in the businesses he indicated he had owned or operated.

The Petitioner acknowledged the lack of evidence, stating that “the relevant working certificate and business license [of [REDACTED] are irretrievable.” She stated that her spouse was “unable to provide bank records of salary and dividends [that he received from [REDACTED],” because “most material relevant to that job are lost,” that he had received payments “in cash, and the bank has updated its computer system for many times.” Although the Petitioner has submitted letters and certificates discussing her spouse’s income, we do not find these documents sufficient in establishing her spouse’s earnings because they contained inconsistent information.

For example, although an employment certificate and letters from [REDACTED] and [REDACTED] indicated that the Petitioner’s spouse had owned 33 percent of [REDACTED], the Individual Business License stated that the company was “Individual Operating” and that it did not have multiple owners. In addition, [REDACTED] indicated that he was the business’s sole operator between 2006 and 2013, and that [REDACTED] became its operator in 2013. This information conflicts with [REDACTED] business license, which provided that [REDACTED] had been its operator since 2005. Moreover, the Petitioner presented a Share Cooperation Agreement, providing that four individuals, including her spouse, jointly owned [REDACTED]. However, this information is inconsistent with a document entitled “Company Profile,” noting that a business, [REDACTED] had ownership interest in [REDACTED].

Furthermore, the Petitioner’s bank record for an account ending in 4881, which listed transactions between August 2010 and April 2011, is insufficient to show her spouse received 4,500,000 RMB from [REDACTED]. The bank statement reflected an account that the Petitioner, not her spouse, owns. The Petitioner has not explained why she would receive funds from a business that she did not own, and for which she did not work. In addition, although the documentation confirmed deposits of funds, it did not reveal the sources or purposes of the funds. Without additional corroboration, the Petitioner has not shown that her spouse received any compensation or dividends from [REDACTED] that financed their purchase of the apartment.

The Petitioner has presented inconsistent documents on the source of capital she and her spouse used to purchase the property that she later used as collateral for the 3,500,000 RMB loan, the proceeds of which she invested in the NCE. “[I]t is incumbent upon [her] to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not

suffice.” *Ho*, 19 I&N Dec. at 591-92. The Petitioner has provided no such evidence to explain or reconcile the inconsistent documentation. In light of these inconsistencies, she has not shown that the Petitioner and her spouse lawfully acquired the property that secured the 3,500,000 RMB loan. Consequently, she has not demonstrated the lawful source of the loan proceeds that she invested in the NCE.

III. CONCLUSION

The Petitioner has not established the lawful source of the funds she invested in the NCE. Accordingly, she has not established 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).

ORDER: The appeal is dismissed.

Cite as *Matter of D-Z-*, ID# 32069 (AAO Jan. 13, 2017)