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

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

MATTER OF Y-L-

DATE: JAN. 27, 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 based on his financing of a [REDACTED] office building through a U.S. Citizenship and Immigration Services (USCIS) designated regional center, [REDACTED].¹ See Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5). This fifth preference (EB-5) 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 of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner did not demonstrate he invested or was in the process of investing the requisite amount in [REDACTED] the new commercial enterprise (the NCE). The Chief found that the Petitioner's assets did not sufficiently secure his loan, the proceeds of which he invested in the NCE.

The matter is now before us on appeal. In support of his appeal, the Petitioner submits a brief and additional documentation. He maintains the Chief erred in denying his petition because he invested cash, not indebtedness, in the NCE. As such, he reasons, he need not demonstrate that his assets adequately secured the 3,450,000 renminbi (RMB) loan.² In the alternative, he states that four real estate properties, which he owns either fully or partially, sufficiently secured the loan.

Upon *de novo* review, we will sustain the appeal.

¹ The authority to designate regional centers is based on section 610 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 purpose of the regional center framework is to encourage pooled immigrant investment in a range of business and economic development prospects within designated regional centers. This regional center model offers an immigrant investor already-defined investment opportunities.

² On April 18, 2014, when the Petitioner received the proceeds in full, 3,450,000 RMB was approximately \$558,418. See <https://www.oanda.com/currency/converter/>, accessed on October 25, 2016, and incorporated into the record of proceedings.

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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 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).

The implementing regulation at 8 C.F.R. § 204.6(e) includes the following definitions:

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.

II. ANALYSIS

The Petitioner invested \$500,000 in the NCE.³ The business plan indicated that the NCE raised between \$8,000,000 and \$10,000,000 from foreign investors, and planned to loan the entire amount to [REDACTED], the job creating entity (the JCE), to construct a [REDACTED] office building in [REDACTED] New York. The business plan explained that in addition to a loan from the NCE, the JCE would obtain funds through a bank loan and equity investments.

The regulatory definition of "capital" includes indebtedness, as well as cash. If a petitioner invests indebtedness, his or her assets must adequately secure the indebtedness. Here, the Petitioner's capital derived from proceeds of a third-party loan. He has therefore invested not cash, but indebtedness, in the NCE. Consequently, he must demonstrate that his properties sufficiently secure the third-party loan to meet the regulatory definition of "capital." See 8 C.F.R. § 204.6(e); see also *Matter of Soffici*, 22 I&N Dec. 158, 162 (Comm'r 1998).

³ The minimum investment amount is \$500,000 as the Petitioner has documented that the NCE is principally doing business in a targeted employment area. See 8 C.F.R. § 204.6(f).

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The record includes a copy of the Property Law of the People's Republic of China and a letter from an attorney in China, which the Petitioner offers on appeal. These documents demonstrate, by a preponderance of the evidence, that his assets sufficiently secured the 3,450,000 RMB loan. A personal loan contract showed that he had obtained the loan from [REDACTED], and used four real estate properties as collateral. He owns two of the properties, co-owns the third property with his daughter, and co-owns the fourth property with his father. According to Agreements on Property Joint Ownership, he has an 80 percent interest in the property he co-owns with his daughter, and a 78.5 percent interest in the property he co-owns with his father. When the Petitioner applied for the [REDACTED] loan, both his daughter and father executed an "Authorization Letter," consenting to his use of the properties as collateral.

In his denial, the Chief concluded that the Petitioner did not establish his ownership interest in the two properties that he co-owns. Specifically, the Chief noted that the Petitioner did not demonstrate that the "Agreements on Property Joint Ownership" "have been registered with the appropriate land authority in China." On appeal, the Petitioner submits a copy of the Property Law of the People's Republic of China. Article 15 of the law provides:

The contract made between the parties concerned on the creation, alteration, transfer or extinction of the property right of the immovables shall become valid as of the time when the contract is concluded, unless otherwise provided for by law or agreed upon in the contract; and where the property right is not registered, it shall not affect the validity of the contract.

Citing a number of provisions in Chinese property law, an attorney from China states: "if there is any agreement, [co-owners'] shares [in an immovable property] shall be determined according to such agreement." The attorney offers his legal opinion on the "Agreements on Property Joint Ownership": "the contractual agreement about interest on the property is legally effective and is protected by the law," regardless of whether it has been registered. In light of the material in the record, including documents that the Petitioner presents on appeal and the appraisals of the four properties, he has shown that his interest in the properties adequately secured the 3,450,000 RMB loan. Accordingly, he has established by a preponderance of the evidence that he invested or is actively in the process of investing at least \$500,000 of his own assets in the NCE. *See* 8 C.F.R. § 204.6(e); *see also Soffici*, 22 I&N Dec. at 162.

III. CONCLUSION

The Petitioner has shown by a preponderance of the evidence that he placed at least \$500,000 of his assets at risk in the NCE. Accordingly, he has established his 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 sustained.

Cite as *Matter of Y-L-*, ID# 96656 (AAO Jan. 27, 2017)