



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

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

MATTER OF X-C-

DATE: SEPT. 22, 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 (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 (NCE) 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 record did not establish, as required, that [REDACTED] the NCE, would create the requisite employment. The Chief reaffirmed that finding on motion.

On appeal, the Petitioner asserts that the business plan she submitted is comprehensive and adequately verifies the likelihood that the NCE will create the necessary number of jobs.

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 an NCE. 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.

Regarding job creation, a petitioner who has not created the necessary number of jobs must submit a “comprehensive business plan” that demonstrates that due to the nature and projected size of the NCE, the need for not fewer than 10 full-time qualifying employees will result within the next two years. 8 C.F.R. § 204.6(j)(4)(i)(B). A comprehensive business plan as contemplated by the regulations “should contain, at a minimum, a description of the business, its products and/or services, and its objectives.” *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). *Ho* concludes that “[m]ost importantly, the business plan must be credible.” *Id.*

Further, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. 8 C.F.R.

§ 204.6(j)(2). Beyond transferring the funds to the NCE's account, a petitioner must document the actual undertaking of business activity; otherwise, no assurance exists that the funds will in fact be used to carry out the business of the commercial enterprise. *Ho*, 22 I&N Dec. at 210.

Finally, the invested capital must not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e) (definition of capital). To show the lawful source of the capital, a petitioner must submit, for example, 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. *Ho*, 22 I&N Dec. at 210-11; *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 195.¹

II. ANALYSIS

The Petitioner contributed \$500,000² to the NCE, which proposes to offer customers digital sign platforms for advertising. Initially, she documented that she had formed the NCE, registered a fictitious name, purchased stock through a common stock purchase agreement, and executed a lease. She also presented a business plan listing \$116,200 in start-up expenses and \$383,800 in cash reserves for operating costs and payroll. She attached an Internal Revenue Service (IRS) Form W-4, Employee's Withholding Allowance Certificate for a single employee. The employer's name does not appear on this form.

Subsequently, the Petitioner submitted an updated business plan; three Forms W-4, payroll documentation; IRS Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2016 showing two employees; a termination agreement for the original lease; and a new lease for a different suite at the same address but with a different landlord. The Chief concluded that the business plan was not comprehensive or credible. He noted the absence of a market analysis for each location for digital signage and evidence supporting the sales income assumptions. He also questioned the projected increases in customers.

In support of her combined motions to reopen and reconsider, the Petitioner provided a Collaboration Agreement between the NCE and [REDACTED]. Under this agreement, [REDACTED] will contribute its current and future locations to the NCE, at least 10 locations by June 2017 and another 10 by December 2017. It will also offer "technical support and training" to the NCE's staff for six months. The NCE will pay all locations' equipment costs and remains responsible for "looking for its own advertisement on the digital signage and manag[ing] its own

¹ 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).

² 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).

sales.” Despite this provision, [REDACTED] “is also allowed to place the advertisement of its customers on the locations for [REDACTED] own profits.” The Chief denied the motions, noting that it had not questioned the NCE’s ability to find locations for its signs and reiterating previous concerns with the business plan.

On appeal, the Petitioner maintains that the business plan explains at length both the national and local market for digital signage and that it is impossible to provide a market analysis for smaller markets such as a single sign location. She further affirms that its sales numbers are reasonable and that it will incur no further hardware costs after it has installed signage at 50 locations. For the reasons discussed below, we conclude that the record does not credibly support the projections in the business plan. We further find that the Petitioner has not sufficiently demonstrated that at least \$500,000 of her funds were at risk at the time of filing or the lawful source of that capital.

A. Business Plan

The record does not credibly support the sales and job creation projections in the business plans. The Chief concluded in his initial decision that the record does not support projections for the number of customers. On appeal, the Petitioner maintains that the analysis of competitors in the latest business plan conveys how the NCE will attract customers to place their advertisements through the NCE’s digital signage. Those sections of the plans, however, are not supported by the record and do not sufficiently demonstrate the anticipated employment creation.

The updated business plan’s sales projections rely on the NCE’s ability to install signage in 50 locations. It lists 62 potential restaurants. The record, however, contains no documentation, such as letters of interest or agreements, confirming these restaurants’ interest in or acceptance of the displays. The Petitioner also has not provided evidence of any negotiations with advertising customers or named any potential clients. Further, the discussion of competitors the Petitioner references on appeal is incomplete and does not sufficiently demonstrate how the NCE will attract advertisers. Notably, neither plan addresses [REDACTED] which appears to be involved in the exact same type of business. In fact, it seems that the NCE’s initial business plan may have originally been that of [REDACTED]. Specifically, at the bottom of page 1, the plan identifies the company as [REDACTED] rather than the NCE. Moreover, according to the Collaboration Agreement, [REDACTED] retains the right to place its own customers’ advertisements at the locations it opens to the NCE, indicating that it will continue to compete with the NCE for advertising customers who are interested in the same locations. This arrangement may also limit the number of clients the Petitioner can accept for any of these displays. The record does not resolve how the NCE will attract the projected number of

³ According to the publicly available September 2011 Restated Registration for [REDACTED] the Petitioner’s attorney in this matter was the Secretary for [REDACTED] at that time. Amended and Restated Articles of Incorporation of [REDACTED] <https://businesssearch.sos.ca.gov/Document/RetrievePDF> (accessed on September 5, 2017, and incorporated into the record of proceedings). According to a 2013 filing, he later served as the company’s chief financial officer. State of California Secretary of State Statement of Information, *id.*

customers under these circumstances, and thus, is insufficient to support a finding that the business plans are comprehensive or credible.

The employment projections specified in the business plans are also not credible. First, the NCE has now outsourced the responsibility of locating suitable places for signage to [REDACTED]. Thus, the Petitioner has not demonstrated that the NCE continues to require the same number of salespersons, whose duties, according to the most recent plan, include “finding prime locations for installing digital signage system[s].” Second, the most recent plan, page 3, contends that the NCE will develop in-house software to deliver cutting edge results. The Petitioner proposes to hire two technicians whose duties will include developing this software. The Collaboration Agreement indicates that [REDACTED] will provide technical support and training. The record, however, contains no additional information, such as patents, licenses, or concepts, about this software. Without corroboration confirming the credibility of the NCE’s plan to develop its own software, the Petitioner has not shown its need for two technicians. Third and finally, the latest lease is not consistent with the most recent plan to employ 10 employees by June 2018. Specifically, the lease is for a suite that is only 957 square feet with two unreserved (and no reserved) parking spaces. The projected profit and loss statement shows \$18,196 of anticipated rent payments for the twelve months ending in June 2019, consistent with the expense of that single location. The Petitioner has not sufficiently explained how 10 full-time employees can utilize that space. Moreover, while the most recent plan states that the NCE requires less square footage than the prior lease because it will separately lease storage space, the record does not contain a contract for such services.

B. Business Activity

In addition to the issues the Chief raised, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). *Ho*, 22 I&N Dec. at 210, states:

Before it can be said that capital made available to a commercial enterprise has been placed at risk, a petitioner must present some evidence of the actual undertaking of business activity; otherwise, no assurance exists that the funds will in fact be used to carry out the business of the commercial enterprise. This petitioner’s de minimis action of signing a lease agreement, without more, is not enough.

At the time of filing in January 2014, the NCE had entered into a lease with the consulting firm [REDACTED] as the “landlord” for suite [REDACTED] at [REDACTED] in [REDACTED] California. Not only did the Petitioner not present any evidence of business activity other than the lease, that document itself raises credibility concerns. First, the NCE subsequently terminated that lease and executed a different one for suite [REDACTED] in the same building. The new lease identifies the

⁴ The Petitioner’s attorney owned this consulting firm, which is now dissolved. Business Search – Entity Detail, <https://businesssearch.sos.ca.gov/CBS/Detail> (accessed on September 5, 2017, and incorporated into the record of proceedings).

landlord as [REDACTED] The Petitioner has not established that the consulting firm was authorized to lease a suite in that building to the NCE. The record lacks documents showing that [REDACTED] is the owner or tenant of suite [REDACTED] or was authorized to lease or sublet it. Moreover, the lease's term as specified in the document both begins and terminates on October 15, 2013. The lease also left blank the permissible use of the property. Finally, it states that the tenant is entitled to no unreserved parking spaces and "all" the reserved ones. The record does not resolve why one tenant in a multi-suite building would be allowed all of the reserved parking.⁵ The record contains no other items showing business activity prior to the Collaboration Agreement in June 2016, such as utility payments, contracts, or negotiations with customers, equipment purchases, renovation costs, etc. Given that the Petitioner initially offered a problematic lease and no other corroboration of business undertakings prior to the agreement with [REDACTED] more than two years later, the record does not support a finding that she had placed her investment funds at risk as of the date she filed the petition.

C. Lawful Source of Funds

As a final issue, the record does not sufficiently demonstrate the lawful source of the Petitioner's investment. She traced the path of her funds back to [REDACTED]

Specifically, in September 2013, the company distributed 3.5 million Renminbi (RMB) (approximately \$567,504)⁶ to the Petitioner's spouse as an indirect owner of 43 percent of that entity. He acquired that indirect interest by investing RMB 8 million (approximately \$966,464)⁷ into [REDACTED] in 1998 and another RMB 14 million (approximately \$1,775,420) in 2006.⁸ The record, however, contains no explanation for how he accumulated those large amounts. Without verification of his income prior to capitalizing the foreign company in 1998 and 2006, the Petitioner has not met her burden of verifying the lawful source of her funds.

III. CONCLUSION

The Petitioner has not presented a comprehensive or credible business plan that meets job creation requirements; had not placed at least \$500,000 at risk as of the date she filed the petition through the undertaking of business activity; and has not demonstrated the lawful source of her funds.

⁵ The subsequent lease with [REDACTED] grants the NCE access to no reserved and two unreserved spaces.

⁶ U.S. dollar amount calculated as of September 10, 2013, at Currency Converter, www.oanda.com/currency/converter (accessed on September 5, 2017, and incorporated into the record of proceedings).

⁷ U.S. dollar amount calculated as of October 30, 1998, at Currency Converter, www.oanda.com/currency/converter (accessed on September 5, 2017, and incorporated into the record of proceedings).

⁸ U.S. dollar amount calculated as of November 8, 2006, at Currency Converter, www.oanda.com/currency/converter (accessed on September 5, 2017, and incorporated into the record of proceedings).

Matter of X-C-

ORDER: The appeal is dismissed.

Cite as *Matter of X-C-*, ID# 580119 (AAO Sept. 22, 2017)