



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

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

MATTER OF F-W-

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. 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, that the Petitioner's invested funds derived from a lawful source.

On appeal, the Petitioner asserts that the Chief erroneously relied on minor discrepancies between the record and nonimmigrant visa applications she filed years ago, rather than independent and objective evidence she has offered, to conclude that she has not established the lawful source of her funds.

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, 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 job creating entity

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).

(JCE) that pursues a specific project. 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).

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 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 contributed over \$500,000³ in capital to [REDACTED] the NCE, which is affiliated with [REDACTED] a USCIS-designated regional center. The NCE proposes to lend \$17 million to [REDACTED] (the JCE) to develop property for commercial use. Throughout the proceeding, the Petitioner has maintained that her funds derive from the sale of a house and her spouse's income. The Chief concluded that the record contained inconsistencies regarding her employers and those of her spouse. On appeal, she asserts that the Chief erred in considering her nonimmigrant visa applications presented to a United States consulate, which she contends she cannot review. She continues that he ascribed too much weight to minor inconsistencies that independent, objective evidence in the record has explained and that the discrepancies are immaterial to the source of her funds. We disagree.

In her initial statement, the Petitioner asserted that she invested RMB 2.7 million (which she equates to \$439,740) in proceeds from the sale of a house and RMB 645,740 (which she equates to \$105,113) from accumulated savings from her spouse's salary. She confirmed that she has been a stay at home mother since the birth of her son in [REDACTED] and identified her spouse's employer as [REDACTED] from 2007 through 2013. The initial filing contained a Form G-325A, Biographic Information, dated in February 2014 and listed her occupation as "housewife" since August 2008. An income certificate from [REDACTED] lists her spouse's income as between RMB 353,000 and RMB 610,700 between 2007 and 2013. The record includes several Certificates of Payment of Individual Income Tax showing amounts her spouse paid during those years.

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).

In response to the Chief's request for evidence on all of her spouse's employers, the Petitioner indicated he worked as an associate professor at the [REDACTED] (now the [REDACTED]) from December 1992 through November 1995; at the [REDACTED] from June 1996 through September 2001; and the [REDACTED] from September 2001 through March 2006. She presented a 1993 letter of appointment from the [REDACTED] confirming her spouse's position from December 1992 through November 1995. In addition, the [REDACTED] issued a certificate for his service there from June 1996 through September 2001 as well as a separate letter explaining that the bank issued him an employee apartment for which he paid RMB 240,000.

The Petitioner listed her own employers as [REDACTED] from November 1994 through April 2001, the [REDACTED] from April 2001 to an unspecified month in 2002, and [REDACTED] from January 2003 to August 2010. She indicated that she reduced her hours at [REDACTED] after her son's birth in [REDACTED]. She then began working limited, flexible hours for [REDACTED] in September 2010, receiving an annual income between RMB 28,000 and RMB 30,000. She explained that for convenience, [REDACTED] combined her wages with those of her spouse, who paid taxes on all wages. She supported these positions with a certificate from the [REDACTED] and letters from [REDACTED] and [REDACTED].

The Petitioner and her spouse both filed nonimmigrant visa applications with the Department of State between 2001 and 2014 that include employment information conflicting with the above. For example, according to her statement to the Chief, in August 2001, her spouse was with [REDACTED] however, he stated in his nonimmigrant visa application that his employer was [REDACTED]. In 2002, he listed his prior place of work as [REDACTED] from 1995 to 2001 and the [REDACTED] from 1989 to 1995. These dates are not consistent with the certificate and letter of appointment, which state that he worked for the [REDACTED] from June 1996 through September 2001 and the [REDACTED] from December 1992 through November 1995. In 2009, her spouse completed another nonimmigrant visa application showing past service for [REDACTED] from 2003 through 2006. This information conflicts with the Petitioner's assertion that he worked at [REDACTED] from 2001 to 2006. While she has now documented that [REDACTED] is a shareholder of [REDACTED] this information does not resolve the conflict between his time at [REDACTED] and [REDACTED] between 2003 and 2006. On applications he filed with the consulate each year from 2011 through 2014, he did not disclose his employment history prior to [REDACTED].

Similarly, the record contains inconsistent evidence on the Petitioner's employment history. On her 2004 and 2005 nonimmigrant visa applications, the Petitioner listed [REDACTED] as her current employer and [REDACTED] as her previous one from 1995 through 2000. On her 2009 application, she stated that she was currently a housewife and previously worked for [REDACTED] from 2002 through 2005 and [REDACTED] from 1995 through 2000. These companies, however, have affirmed that she was with [REDACTED] from January 2003 to August 2010 and [REDACTED] from November 1994 to April 2001.

We find that the Chief's review of the nonimmigrant visa applications was proper, that the inconsistencies are significant and material, and that the Petitioner has not resolved them. She cites no legal authority, and we are aware of none, that precludes us from comparing the employment information on the nonimmigrant visa applications that she and her spouse filed over several years with the documentation she presents in support of the instant petition. Moreover, both the Petitioner and her spouse electronically signed and submitted the nonimmigrant visa applications to the consulate, certifying that they "have read and understood the questions in th[e] application[s] and that [their] answers are true and correct to the best of [their] knowledge and belief." While she has offered a letter from a lawyer in China affirming that it was not illegal for [REDACTED] to combine her wages with those of her spouse, it remains that the employers and employment dates are significantly different between the information in the record and the nonimmigrant visa applications. Even within the record, the Petitioner has not been consistent about her career. A statement that she worked flexible hours after the birth of her son does not sufficiently resolve the discrepancy between her assertion that she stayed home after that time and her later contention that she worked for two companies in subsequent years.

These inconsistencies are also material to the adjudication of the petition and the instant appeal. While she indicated initially that the investment derived from proceeds from a house and her spouse's income, some of the inconsistencies relate to his income. Moreover, as she now maintains that [REDACTED] combined her income with his, her livelihood is also a relevant issue. Further, while tax returns are generally independent and objective evidence, they do not reveal the employer or the wages on which the taxes are based. As such, they do not fully resolve the inconsistencies.

The Petitioner also offers on appeal an article entitled "[REDACTED]" She maintains that this article confirms that entrepreneurs in China are involved in multiple ventures. Her spouse's employment, however, was as a professor at an institute, assistant to a bank president, and general manager for a real estate company. In fact, she specifically affirms in an October 5, 2015, cover letter that her spouse had no ownership interest in [REDACTED] and the record does not demonstrate his equity interest in another business. Accordingly, she has not sufficiently demonstrated that information on entrepreneurs in China is relevant.

In addition to the inconsistencies the Chief raised, a review of the path of funds reveals another issue. The Petitioner has asserted that a portion of her invested funds derived from her spouse's income. Before her remittance to the NCE, her spouse received a deposit of RMB 430,000 into his account ending in [REDACTED] in November 2012. He then transferred those funds to the Petitioner and she distributed them to various individuals who assisted her in moving the money to the United States. The register description of the RMB 430,000 deposit is "Dealings." The Petitioner has not sufficiently shown that these funds, from an unidentified source, are her spouse's accumulated savings from his salary.

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III. CONCLUSION

The Petitioner has not presented consistent and credible documentation demonstrating the lawful source of her investment funds.

ORDER: The appeal is dismissed.

Cite as *Matter of F-W-*, ID# 558990 (AAO Sept. 22, 2017)