U.S. Citizenship and Immigration Services

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

MATTER OF C-H-

DATE: AUG. 30, 2019

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 (EB-5) 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 Petitioner did not establish eligibility for the classification. Specifically, the Chief determined that the Petitioner did not document the lawful source of the funds she remitted to [redacted], the NCE, which was formerly associated with a United States Citizenship and Immigration Services (USCIS) designated regional center, [redacted].[1] On appeal, the Petitioner submits additional evidence and maintains that she has shown eligibility for the benefit sought.

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 NCE. 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. An immigrant investor may invest the required funds directly in an NCE or through a regional center.[2] 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 investment project taken on either directly by the NCE, or by one or more separate entities known as the "job creating entity" (JCE). 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).

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[1] In a May 2019 letter, a principal of the regional center stated that the regional center no longer sponsors the NCE's project, because the "NCE has breached the [parties'] contract and failed to perform the terms as required in the agreement." This letter appears to support other grounds to deny the Petitioner's petition.

[2] A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e).

## II. ANALYSIS

In June 2016, the Petitioner remitted $500,000 to the NCE's escrow account as her EB-5 capital.[3] According to pages 5 through 9 of the September 2015 business plan, the NCE intends to raise up to $100,000,000 from 200 foreign national investors, and loan the capital to [redacted], to develop and construct 325 timeshare and condominium units in [redacted] Hawaii. The project is known as the [redacted].

The Petitioner alleges that her EB-5 capital derived from a 3,700,000 renminbi (RMB or Yuan) loan that she obtained from China [redacted] Bank in June 2016. The Mortgage Contract indicates that the Petitioner used her property in [redacted] China, as collateral for the loan. The record shows that she purchased the property in 2010 for 3,528,469 RMB, an amount she paid in full with three installments.[4] She claims that she used her accumulated income to purchase the property. As we will explain below, we find that she has not established, by a preponderance of the evidence,[5] her eligibility for the classification. Specifically, she has not documented the lawful source of her EB-5 capital.

To be eligible for the EB-5 classification, a petitioner must establish that his or her invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show the lawful source of the funds, an investor must submit, for example, foreign business and tax records or documentation identifying any other sources of funds. 8 C.F.R. § 204.6(j)(3). Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *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.[6] *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

First, while the Chief did not discuss this issue, we find that the Petitioner has not submitted sufficient evidence confirming that she lawfully obtained 3,528,469 RMB to purchase the [redacted] property that serves as the collateral for the 3,700,000 RMB loan, the proceeds of which she claimed to have used as her EB-5 capital. As supporting evidence, she presents a June 2016 Work and Income Certificate from her employer, which states that "during the period from April 2007 to September 2010, the total after-tax income including wage, bonus and subsidies of [the Petitioner] . . . was about RMB 4,350,000 Yuan." While her total earnings between 2007 and 2010 could cover the cost of the property purchase, she has not presented adequate documentation verifying that she had saved at

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[3] The Petitioner indicates that the NCE is located in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2). In addition, she remitted $50,030 to the NCE to cover fees and expenses.

[4] While the Pre-Sale Contract listed the price of the house as 3,541,279 RMB, in a June 2016 statement, the Petitioner indicated that she had received a refund from the seller "[d]ue to area difference after completion of the house construction," and that the actual price for the house was 3,528,469 RMB.

[5] If a petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *see also* 6 *USCIS Policy Manual* G.2(E), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[6] These requirements "serve a valid government interest; i.e., to confirm that the funds utilized in the [EB-5] program are not of suspect origin." *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001) (holding that a petitioner had not established the lawful source of her funds because, in part, she did not designate the nature of all of her employment or submit five years of tax returns), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

least 3,528,469 RMB, or approximately 81% of her earnings, to finance the purchase. Without additional corroboration that she retained a sufficient amount of her earnings, the Petitioner has not demonstrated the lawful source of the funds she used to purchase the property.

Second, as discussed in the Chief's decision, the Petitioner has not sufficiently documented the lawful source of $420,000 of the $500,000 she remitted to the NCE as EB-5 investment. *See Izummi*, 22 I&N Dec. at 195 (noting a petitioner must show that the funds were his or her own by "document[ing] the path of the funds"). The Petitioner claims that she solicited help of friends and relatives to bring the 3,700,000 RMB loan proceeds out of China. One of the individuals who helped her was The bank records show that received 1,650,000 RMB and 1,122,000 RMB – a total of 2,772,000 RMB – from the Petitioner in June 2016. wired the same amounts to s account in China ending in In exchange, transferred $250,000 and $170,000 – a total of $420,000 – from her account in ending in to 's account in ending in then remitted these two amounts in United States Dollars from her account ending in to the Petitioner's account ending in The Petitioner and , through engaged in a currency swap, under which the Petitioner swapped her in China for United States Dollars in This series of transactions shows that 2,772,000 RMB – a portion of the 3,700,000 RMB loan the Petitioner obtained from China Bank – did not leave China, and that the $420,000 she received in her account ending in did not originate from the loan.

As the Petitioner used funds in her account ending in to invest in the NCE, and because a large portion of the funds – $420,000 – did not originate from her China Bank loan, she must document the lawful source of the funds she received from through *See Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. On appeal, the Petitioner submits an October 2018 letter from , claiming she accumulated the $420,000 from her earnings. however, is unable to present sufficient bank records for her account ending in that verifies she had a balance of at least $420,000 in June 2016. She states that she had closed the account. Instead, presents bank statements for another account, ending in which indicate that between December 2015 and May 2016, she received a monthly wage of approximately $9,000, and that her account balance fluctuated between approximately $1,030 and $53,400. also offers a Work and Income Certificate, providing that "from March 2009 to June 2016, the total income after tax of was about USD 780,000." The record, however, does not include documentation showing that had saved enough of her earnings in her account ending in to cover the $420,000 she sent to the Petitioner, through in June 2016. Without additional corroboration, the Petitioner has not established the lawful source of the $420,000 that originated from .

Based on the reasons we have discussed above, the Petitioner has not documented the lawful source of her EB-5 capital, in its entirety. *See* 8 C.F.R. § 204.6(e), (j)(3); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. Specifically, she has not demonstrated, by a preponderance of the evidence, that she had lawfully accumulated sufficient funds to purchase the property that she used to secure the 3,700,000 RMB loan, the proceeds of which she claimed to have used as EB-5 capital. In addition, she has not established, by a preponderance of the evidence, the lawful source of the $420,000 she received from through

## III. CONCLUSION

The Petitioner has not documented the lawful source of the capital she remitted to the NCE. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-H-*, ID# 3586022 (AAO Aug. 30, 2019)