U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-L-

DATE: APR. 18, 2018

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 a claimed investment in Godfrey Hotel Fund, LP, a new commercial enterprise (NCE).[1] *See* 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 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 the Petitioner did not establish that the funds he remitted to the NCE qualified as capital under the regulation. Specifically, he did not demonstrate that his personal assets secured the loan, the proceeds of which he forwarded to the NCE. In addition, the Chief concluded that the Petitioner did not document the lawful source of his funds.

On appeal, the Petitioner provides a brief and additional evidence. He maintains that he has shown his eligibility for the immigrant investor classification.

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

I. LAW

A foreign national may be classified under section 203(b)(5)(A) of the Act as an immigrant investor if he or she invests the requisite amount of qualifying capital in a NCE. The NCE can be any lawful business that engages in for-profit activities. The investor must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j).

[1] The Petitioner made his investment through a U.S. Citizenship and Immigration Services (USCIS)-designated regional center, [redacted] *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, Pub. L. No. 102-395, 106 Stat. 1828 (Oct. 6, 1992). His initial filing indicated that the NCE would lend his and other investors' funds to [redacted] to finance the development of the [redacted] in downtown [redacted]

The regulatory definition of "capital" at 8 C.F.R. § 204.6(e) includes indebtedness, as well as cash, and provides:

> *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 . . . .

The same regulation also defines "invest" to mean "to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part." 8 C.F.R. §204.6(e). A contribution of loan proceedings, such is the case here, constitutes an investment of indebtedness, for which a petitioner must demonstrate that his or her personal assets sufficiently secure the loan. *See Matter of Soffici*, 22 I&N Dec. 158, 162 (Assoc. Comm'r 1998); *see also* 8 C.F.R. § 204.6(e) (defining "capital").

In addition, the regulation at 8 C.F.R. § 204.6(j)(2) states, in pertinent part:

> To show that the petitioner has invested or is actively in the process of investing the required amount of capital, 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 . . . . The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:
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> . . . .
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> (v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

II. ANALYSIS

A. Investment of Loan Proceeds

The record does not demonstrate that the Petitioner's personal assets sufficiently secured the 3,650,000 renminbi (RMB) loan he obtained from [redacted] (medical company) to invest in the NCE.[2] *See Soffici*, 22 I&N Dec. at 162; *see also* 8 C.F.R. § 204.6(e). On appeal, he states that "the funds used as collateral for the loan were from dividends that [he] received as shareholder of the [medical company] and that these assets belong to [him] and

[2] The Petitioner claimed that the amount was equivalent to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (providing that the requisite amount of capital is downwardly adjusted to $500,000 if the NCE is located in a targeted employment area).

not the company." The evidence, including the specific terms in the loan agreement, however, does not support this assertion.

According to the loan agreement, the Petitioner "uses the equity of 26.67% held by him at the [medical] company as the guarantee," and intends to repay the loan with "his share [of] dividends in the future." The language of the loan agreement shows that the Petitioner secured the loan with his equity interest in the company, and that he intended to repay the loan with his prospective shareholder distributions. The relevant inquiry therefore is whether at the time of the loan, the value of his equity interest in the medical company was at least 3,650,000 RMB. If it was, then he had sufficiently secured the loan with his personal assets, and the loan proceeds he contributed to the NCE would meet the regulatory definition of "capital." *See* 8 C.F.R. § 204.6(e).

The Petitioner has not submitted sufficient evidence demonstrating that in 2015, the value of his equity interest in the medical company was at least 3,650,000 RMB. The record does not include documents, such as an appraisal of the medical company, verifying that his 26.67% ownership was worth 3,650,000 RMB in 2015. He has presented the medical company's financial statements, including both a balance sheet and a consolidated balance sheet ending in December 2015[3]. These documents contain inconsistencies and thus are insufficient to confirm the value of his equity. As illustrated in the chart below, the ending balance listed in the company's 2014 balance sheet does not match the beginning balance of either of the two 2015 balance sheets.

(Amounts are in RMB)	Ending balance from 2014 Balance Sheet	Beginning balance from 2015 Consolidated Balance Sheet	Beginning balance from 2015 Balance Sheet
Total Assets	126,636,739.82	196,597,582.52	135,583,768.86
Undistributed Profit	32,935,532.26	75,502,315.46	29,431,924.06
Owner's Equity (Shareholder's Equity) in Total	37,435,532.26	87,575,454.65	35,863,613.04
Liabilities and Owner's Equity (or Shareholder's Equity) in Total	126,636,739.82	196,597,582.52	135,583,768.86

[3] The record does not contain an explanation for the differences between the two balance sheets.

These financial statements are relevant in our determination of the value of the Petitioner's equity interest in the medical company. As such, he must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). He, however, has not done so.

In response to the Chief's notice of intent to deny the petition, the Petitioner provided a certificate from the medical company, stating: "the market value of [his] share at the company has reached above 10,000,000 Yuan [RMB] in the year 2016." This document, however, did not discuss the value of his equity when he obtained the loan in 2015. On appeal, the Petitioner presented a "Progressive Report on Strategically [sic] Investment in [the Medical Company]," which indicated that in 2016, a business agreed to purchase 51% of the medical company for a "transfer price . . . [that] reaches RMB 331,500,000." This amount, however, was not a set price for the 51% interest, as the agreement required that the seller of the equity to compensate the buyer in case the medical company did not meet certain performance targets. This document therefore did not establish the value of the Petitioner's equity in 2016, or 2015 when he obtained the loan.

The record also includes an "Enterprise Credit Information Publicity Report," which showed that in January 2016, the Petitioner's equity interest in the medical company initially decreased from 26.67% to 8.53%, and then increased to 20%, after he contributed additional paid-in capital.[4] This document similarly did not support the "above 10,000,000 [RMB]" valuation of his equity specified in the medical company's certificate.

On appeal, the Petitioner claims that he has repaid a large portion of the loan with shareholder distributions he received from the medical company. He offers documentation corroborating his receipt of dividends and partial repayment of the loan. As discussed, at issue is not if or how he has repaid the loan; rather, it is whether at the time he obtained the loan in 2015, his personal assets sufficiently secured the indebtedness. Based on the reasons we specified above, we conclude that the evidence in the record is insufficient to establish that the value of his collateral – equity in the medical company – was at least 3,650,000 RMB in 2015. As such, he has not shown that his personal assets sufficiently secured the loan or that the proceeds of which meets the definition of "capital" under 8 C.F.R. § 204.6(e).

B. Employment and Income History

The Chief concluded in his decision that the Petitioner did not establish the lawful source of the funds he remitted to the NCE, because the funds derived from a loan the medical company offered to him as its shareholder, but he did not document the source of his initial contribution of 800,000 RMB to the medical company. The Chief discussed a number of inconsistencies in the record, including information from his nonimmigrant visa applications, relating to his employment and income before he invested in the medical company in 2005. Because the Petitioner has not

[4] According to this document, the Petitioner raised his contribution amount from 800,000 RMB to 1,875,000 RMB in January 2016.

demonstrated that the 3,650,000 RMB loan proceeds meet the regulatory definition of "capital" under 8 C.F.R. § 204.6(e), he has not demonstrated his eligibility for the classification and we need not consider additional grounds for dismissal.

III. CONCLUSION

The Petitioner's remittance of the loan proceeds does not constitute his capital investment in the NCE because he did not sufficiently secure the loan with his personal assets. *See* 8 C.F.R. § 204.6(e), (j)(2). The regulatory definitions of "capital" and "invest" preclude an investment of unsecured or inadequately secured indebtedness. 8 C.F.R. § 204.6(e).

ORDER: The appeal is dismissed.

Cite as *Matter of W-L-*, ID# 1033276 (AAO Apr. 18, 2018)