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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Y-L-

DATE: MAR. 16, 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 an investment in a new commercial enterprise (NCE). *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.[1]

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner did not establish the lawful source of the funds he invested in the NCE. The Petitioner indicated that his parents gifted him the investment capital, but he did not demonstrate how they had accumulated the funds.

On appeal, the Petitioner submits a brief and additional documentation, and maintains that he has established the lawful source of his capital through documents relating to his parents' business income and personal savings.

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

I. LAW

A foreign national investor 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. *See* section 203(b)(5)(A) of the Act.

The implementing regulation at 8 C.F.R. § 204.6(e) provides:

> Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided that the

[1] The requisite amount of qualifying capital is $1,000,000. *See* 8 C.F.R. § 204.6(f).

> 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. All capital shall be valued at fair market value in United States dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b)(5) of the Act.

In addition, a petitioner cannot demonstrate the lawful source of capital by submitting only bank letters or statements documenting the deposit of funds. *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). Instead, a foreign national investor must present evidence of the complete path of the investment to meet his or her burden of establishing that the funds are lawfully obtained and the investor's own. *Izummi*, 22 I&N Dec. at 195; *see also* 6 USCIS Policy Manual G.2(A)(2)-(4), https://www.uscis.gov/policymanual.

II. ANALYSIS

The Petitioner indicates that his parents gifted him his investment capital. He, however, has not established by a preponderance of the evidence that his parents obtained or accumulated the funds lawfully, such as through earnings from their business. The record shows that his father is the owner and director of [redacted] (the holding company), which is the sole shareholder of [redacted] (the subsidiary). Bank documents illustrate that in July 2014, the holding company remitted $1,002,000 to the Petitioner's father, who then transferred the amount to the Petitioner. About a week later, the Petitioner deposited $1,000,500 into the NCE's account as his capital investment. While the entire gifted amount appears to have originated from the holding company, the Petitioner on appeal states that his investment capital also derived from his parents' personal savings.

The subsidiary's income statements indicate that the company's net profits between 2009 and 2013 totaled 10,040,216.54 renminbi (RMB), which was approximately $1,590,710.[2] While the financial statements show that the subsidiary was a profitable business, the Petitioner has not submitted sufficient documentation, such as the company's bank statements, to confirm that the subsidiary distributed any profits or remitted any funds to the holding company.

Assuming *arguendo* that the subsidiary did distribute or remit funds to the holding company, the Petitioner has not demonstrated that as of July 2014, the holding company lawfully accumulated at least $1,002,000 to transfer to the Petitioner's father. On appeal, the Petitioner offers the holding company's bank statements from 2008 to 2012. While some of these documents appear to indicate 2012 ending balances of at least $1,002,000, the Petitioner has not submitted bank statements for the period

[2] On December 31, 2012, 10,040,216.54 RMB was approximately $1,590,710. *See* currency equivalency at https://www.oanda.com/currency/converter/.

immediately before the July 2014 remittance, which is relevant in establishing that the holding company lawfully acquired the $1,002,000 that it transferred to his father.[3]

Moreover, even if the Petitioner had shown that the holding company accumulated, or received from the subsidiary, at least $1,002,000 to remit to his father in July 2014, he has not demonstrated that his father obtained the funds lawfully. On appeal, the Petitioner states that his father "is legitimately entitled to the transfer of a part of the after-taxed business profits" and that "it was not necessary for him to specifically authorize the wire-transfer from the subsidiary business to the holding business, or to his personal account." As discussed in *Soffici*, 22 I&N Dec. at 162, however, a corporation and an individual are two separate legal entities. This is true even if the individual is the sole shareholder of the business. *See id.* at 161-63. In this case, the Petitioner has not established that business properties, including funds in bank accounts, automatically become a shareholder's assets. Significantly, the record does not include corporate documents illustrating that the holding company distributed profits to the Petitioner's father in July 2014. Without additional corroboration, the Petitioner has not verified that his father acquired the capital lawfully.

Similarly, the record contains insufficient evidence confirming that any of the Petitioner's investment funds came from his parents' personal savings. The Petitioner presented individual income tax certificates from 2009 through 2013 indicating his father paid taxes on his income. He has not submitted sufficient documentation, such as bank statements, illustrating how much of the earnings his father saved before making the monetary gift in July 2014. The Petitioner's father states that "[his] wife and [he] have saved for years since 2001 so that [they] were able to give." As discussed previously, the Petitioner initially stated that all of the investment came from profits of his father's business. The record contains inadequate evidence showing how much of the investment originated from the personal savings of the Petitioner's parents. Without additional evidence establishing the amount of his parents' personal savings, the Petitioner has not demonstrated that they retained sufficient income to gift him any portion of the $1,002,000 investment.

Finally, the regulation at 8 C.F.R. § 204.6(g), which discusses multiple investors in a NCE, provides:

> The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien entrepreneur even though there are several owners of the enterprise, including persons who are not seeking [immigrant investor] classification under section 203(b)(5) of the Act and non-natural persons, both foreign and domestic, provided that the source(s) of all capital invested is identified and all invested capital has been derived by lawful means.

[3] The Petitioner previously filed another petition seeking immigrant investor classification which the Chief denied. Documentation shows that in February and March of 2013, the Petitioner's father directed the holding company to transfer a total of $3,000,000 to a NCE associated with the earlier petition. This $3,000,000 remittance calls into question whether the subsidiary or the holding company could have lawfully accumulated an additional $1,002,000 to transfer to the Petitioner's father in July 2014.

The Petitioner states that he is one of the NCE's two investors. The NCE's business plan indicates that the other investor is [redacted] who has invested $10,000 and owns one percent of the NCE. The record, however, does not include documentation demonstrating the lawful source of the $10,000. As such, the Petitioner has not satisfied the regulatory requirements under 8 C.F.R. § 204.6(g) as pertaining to multiple investors in a NCE.

A petitioner cannot demonstrate the lawful source of funds without documenting the complete path of the funds. *See Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. In light of the reasons stated above, specifically, the lack of sufficient documents verifying the source of the Petitioner's parents' $1,002,000 gift, the Petitioner has not established the lawful source of his capital. In addition, he has not shown the lawful source of [redacted] $10,000 investment in the NCE. *See* 8 C.F.R. § 204.6(g).

III. CONCLUSION

The Petitioner has not established his eligibility for the immigrant investor classification.

ORDER: The appeal is dismissed.

Cite as *Matter of Y-L-*, ID# 140481 (AAO Mar. 16, 2017)