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

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

MATTER OF Y-W-

DATE: NOV. 9, 2016

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 his financing of an insurance and annuities brokerage firm in the [REDACTED] California. *See* Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5). This fifth preference employment based 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.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner had not documented an at-risk investment of lawfully obtained funds.

The matter is now before us on appeal. In his appeal, the Petitioner submits additional exhibits and maintains that the Chief erred by misapplying case law and giving insufficient weight to certain evidence.

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 new commercial enterprise. 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. This job creation should generally occur within two years of the foreign national's admission to the United States as a Conditional Permanent Resident. Section 203(b)(5)(A) of the Act, as amended, provides that a foreign national may seek to enter the United States for the purpose of engaging in a new commercial enterprise:

- (i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and

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- (ii) which will benefit the United States economy and create full time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

II. ANALYSIS

The Petitioner filed the Form I-526, Immigrant Petition by Alien Entrepreneur, listing his initial investment as \$500,000¹ on an unspecified date. He identified the new commercial enterprise as [REDACTED] (the NCE). The initial filing included the NCE's articles of organization, operating agreement, membership certificates and ledger, employer identification number, sublease, and business plan. The Petitioner offered his own statement affirming that his funds derived from business profits from the [REDACTED] and a gift from his sister, [REDACTED]. He also provided several transactional documents relating to the gift. In his response to the Chief's request for evidence, the Petitioner attached additional financial materials and confirmation from his sister that she gifted him funds. The Chief concluded that the record did not trace at least \$500,000 from the Petitioner to the NCE and that the post-filing gift letter from [REDACTED] did not establish the source of funds.

On appeal, the Petitioner maintains that the gift letter, while drafted after the date of filing, related to facts prior to that date and that the transactional documents demonstrate that it is more likely than not that he made the requisite minimum investment. As discussed below, we find that the Petitioner has not verified an at-risk investment of lawfully obtained funds for the reasons raised by the Chief and because the record does not include evidence of any business activity by the NCE. In addition, we find that the NCE's business plan does not credibly show that it is likely to fulfill the necessary job creation.²

A. Lawful Source of Funds

The regulation at 8 C.F.R. § 204.6(j)(3) states, in pertinent part, that:

To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:

- (i) Foreign business registration records;

¹ As the Petitioner documented that the business will be principally doing business in a targeted employment area, the minimum investment amount is \$500,000. 8 C.F.R. § 204.5(f).

² We may dismiss an appeal even if the Chief does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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- (ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;
- (iii) Evidence identifying any other source(s) of capital; or
- (iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements showing the deposit of funds. *Matter of Ho*, 22 I&N Dec. 206, 210-211 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). Without documentation of the path of the funds, a petitioner cannot meet his burden of demonstrating that the funds are his own funds. *Id.* Unsubstantiated information is insufficient to satisfy a petitioner's burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). These requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Calif. 2001) *aff'd* 345 F.3d 683 (9th Cir. 2003) (affirming a finding that a petitioner had failed to establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns). An unsupported letter indicating the number and value of shares of capital stock held by a petitioner in a foreign business is also insufficient documentation of source of funds. *Ho*, 22 I&N Dec. at 211.

First, we agree with the Petitioner that we may consider a post-filing letter clarifying a transaction that predates the filing. The new gift letter on appeal, however, affirms that the gift occurred between November 2014 and January 2015, which postdates the filing. Even if we assume that the years are a typographical error given that the transactions all took place during November and December 2013, we would still conclude that the Petitioner has not established the source of his funds for the reasons detailed below.

The record documents November and December 2013 transfers from accounts ending in [REDACTED] and [REDACTED] held by various individuals, to an account ending in [REDACTED]. The

³ The initial applications for funds transfers list the account holder for [REDACTED] as the Petitioner. On appeal, the Petitioner presents a 2016 letter from [REDACTED] Portfolio Officer at [REDACTED] verifying that the NCE is the account holder of that account.

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amounts total \$345,000. The record contains corroboration that the Petitioner's sister transferred money to some of these source accounts from her account ending in [REDACTED]. The Petitioner states that [REDACTED] is a business account for which his sister is a signatory.⁴ [REDACTED] the accountant for [REDACTED] affirms that it is a business account held by that company. The bank statements, however, identify the sister as the account holder. The Petitioner has not resolved the inconsistency with independent, objective evidence pointing to where the truth lies. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Beyond the \$345,000 mentioned above, the Petitioner explains on appeal that an additional 180,000 derived from an account ending in [REDACTED] stating that it is one "for which [his sister] had signing authority." As evidence of the transfer, the Petitioner presents her letter to the bank and forwarded email correspondence confirming the transfer. The Petitioner has not offered statements for either account that would further corroborate these transactions.

Assuming [REDACTED] is the NCE's business account and that the Petitioner's sister did, in fact, transfer \$180,000 to that account from [REDACTED] we must still determine the identities of those who transferred money into [REDACTED] and [REDACTED] and the source of those funds. In November 2013, the sister initiated two transfers of 308,000 renminbi (RMB) to [REDACTED] (account [REDACTED] and [REDACTED] (account [REDACTED] respectively. In December 2013, the sister distributed two sums of 310,000 RMB each and one sum of 280,000 RMB to the Petitioner (account [REDACTED] (account [REDACTED] and [REDACTED] (account [REDACTED] respectively. The Petitioner transferred 306,000 RMB from his account ending in [REDACTED] to [REDACTED] (account [REDACTED] in December 2013 shortly after a "cash" deposit of 910,000 RMB. The funds in [REDACTED] account [REDACTED] derived from a deposit of 306,000 RMB from [REDACTED]. Those funds, in turn, came from the Petitioner's account ending in [REDACTED] also shortly after the 910,000 RMB cash deposit.

Other documented transactions include the following December 2013 transfers to the Petitioner's sister's account ending in [REDACTED]

- \$50,000 from [REDACTED] "for supporting family";
- \$50,000 from [REDACTED] for "supporting family" after receiving a deposit from an unknown source of 310,000 RMB;
- \$50,000 from [REDACTED] "for tuition"; and
- \$30,000 from [REDACTED]

With respect to the first transfer to [REDACTED] from [REDACTED] the Petitioner states that the source is [REDACTED] on behalf of [REDACTED] bank statement, however, does not list a business as the holder of the account [REDACTED] from which the funds originated. Moreover, the statement indicates

⁴ Unsupported statements in a brief do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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that [REDACTED] transferred 310,000 RMB to [REDACTED] before that individual transferred those funds back. Accordingly, [REDACTED] not [REDACTED] is the source of those funds.

Regarding the source of funds [REDACTED] transferred to account [REDACTED] the Petitioner indicates that his sister made this deposit using cash on hand. The source of a cash deposit is difficult to corroborate. With respect to the funds [REDACTED] transferred to account [REDACTED] the Petitioner's appellate brief identifies the source as [REDACTED]. The only evidence that the source account [REDACTED] for these funds belongs to [REDACTED] is a letter from accountant [REDACTED].

With respect to the Petitioner's accumulation of funds from [REDACTED] the record includes letters from the company affirming that it resolved to issue him a 1,000,000 RMB bonus in May 2013 and that his sister's annual income is 1,000,000 RMB plus a 500,000 RMB bonus. The only financial statement for [REDACTED] however, is one balance sheet with a preparation date of December 31, 2013. The exhibit does not contain indicia of who prepared it or whether it resulted from an audit or other review. This single item is insufficient to demonstrate that [REDACTED] is a successful company with the resources to issue the level of bonuses discussed. As noted above, the bank documents for the accounts the Petitioner identifies as [REDACTED] business accounts actually list his sister or [REDACTED] as the account holder.

In summary, the funds from [REDACTED] do not trace back to the Petitioner or his sister. Also, the source of the 910,000 RMB "cash" deposit into the Petitioner's account ending in [REDACTED] is not apparent from the record. In addition, the record contains insufficient documentation regarding how the Petitioner and his sister accumulated their funds. Accordingly, the Petitioner has not established by a preponderance of the evidence that the funds derive from a lawful source.

B. At-Risk Nature of Investment

The regulation at 8 C.F.R. § 204.6(j)(2) states:

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. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital.

The exhibits before the Chief did not trace at least \$500,000 to the account ending in [REDACTED] which, as stated above, the Petitioner indicates belongs to the NCE. Accepting that [REDACTED] did transfer \$180,000 to [REDACTED] the record now shows transfers of the required amount to that account. Even assuming it is an NCE account, however, the Petitioner has not offered any bank statements to confirm that the money remained in that account or was used for business expenses. The regulation

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at 8 C.F.R. § 204.6(j)(2)(i) requires “bank statements” as evidence of funds deposited with the NCE. The Petitioner has not presented this required initial documentation.

Beyond the issue the Chief raised, even if the Petitioner had shown a transfer of at least \$500,000 to the NCE’s account, such evidence would not be sufficient to demonstrate that the funds are at-risk. *Ho*, 22 I&N Dec. 206, 210 (Assoc. Comm’r 1998), states:

Simply formulating an idea for future business activity, without taking meaningful concrete action, is similarly insufficient for a petitioner to meet the at-risk requirement. 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.

Review of the record reveals that the petition is not supported with any documentation of business activity other than a one-page sublease between the NCE and one of its members’ businesses. A mere commercial lease was deemed insufficient in *Ho*. Similarly, in this matter, the Petitioner has not verified sufficient business activity to demonstrate that his investment is at risk.

C. Job Creation

The regulation at 8 C.F.R. § 204.6(j)(4)(i)(A) lists the evidence that a petitioner must submit to show job creation, including photocopies of relevant tax records, Forms I-9, or other similar documents for ten (10) qualifying employees. Alternatively, if the new commercial enterprise has not yet created the requisite 10 jobs, a petitioner must provide a copy of a comprehensive business plan showing the need for not fewer than ten qualifying employees. 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. *Ho*, 22 I&N Dec. at 213. Elaborating on the contents of an acceptable business plan, *Ho* states that the plan should contain a market analysis, the pertinent processes and suppliers, marketing strategy, organizational structure, personnel’s experience, staffing requirements, timetable for hiring, job descriptions, and projections of sales, costs, and income. The decision concludes: “Most importantly, the business plan must be credible.” *Id.*

As stated previously, the NCE in this case is an unaffiliated insurance and annuities brokerage firm. The business plan projects that it will hire and employ three in-house agents by the end of the first year and an additional eight by the end of the second. The sublease indicates that the NCE will rent space from a competing company that offers the same services, [REDACTED]

[REDACTED] One of the NCE’s co-owners, [REDACTED] is the owner and president of [REDACTED] characterized in the plan as “the largest Asian general [insurance] agency in

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██████████ The business plan identifies East Asian foreign nationals and U.S. citizens of East Asian descent as the NCE's target market segments.

In this matter, the business plan contains the necessary elements of a comprehensive plan as set forth in *Ho*, but the details do not credibly demonstrate the likelihood that the NCE will create the necessary jobs. First, while the plan includes a market analysis, it does not list ██████████ among its competitors or explain how the NCE can compete with a company performing the identical services in the same location. Thus, the market analysis is not sufficiently comprehensive.

With respect to the organizational structure, the business plan does include this information. According to page 19 of the plan, however, when agents obtain new applications from clients, they are to "submit them to the ██████████ new business department." This information suggests that the NCE is not independent of ██████████. If the NCE will effectively take over the services and location of an existing business,⁵ any employees already performing those services would not be considered new.⁶ Thus, the organizational structure, while included in the business plan, raises questions about new job creation.

Finally, while the business plan includes a timetable for hiring eleven employees, the Petitioner did not submit the primary lease or a floor plan, nor does the sublease specify the amount of space the NCE will occupy. Thus, the Petitioner has not established how many employees its space can accommodate.⁷

In summary, the business plan does not credibly establish that the NCE is likely to create the necessary new jobs.

III. CONCLUSION

The Petitioner has not documented an at-risk investment of lawfully obtained funds or established that it is likely to create the necessary jobs. For these reasons, the Petitioner has not met his burden

⁵ The Petitioner need not establish a new commercial enterprise; however, when investing in an existing business, the Petitioner must still demonstrate that the jobs will be new. *Soffici*, 22 I&N Dec. at 167-68; see also *Matter of Hsiung*, 22 I&N Dec. 201, 204-05 (holding that a Petitioner may not cause a net loss of existing employment).

⁶ *Id.* While the NCE obtained a license to engage in the insurance trade, its sole endorsed agent is ██████████ whose license lists his business address as that of ██████████ headquarters, rather than the address of the NCE. California Department of Insurance License Name Search, [https://interactive.web.insurance.ca.gov/webuser/licw_name_search\\$.startup](https://interactive.web.insurance.ca.gov/webuser/licw_name_search$.startup) (accessed September 20, 2016 and incorporated into the record of proceeding); ██████████ (accessed September 20, 2016 and incorporated into the record of proceeding).

⁷ The Petitioner need not demonstrate at this stage that he has already created the necessary jobs or, in fact, any jobs at all. Rather, a Petitioner may, as he has done here, instead rely upon a business plan. Also, factors, including the length of the pendency of the petition, can reasonably delay the implementation of a credible timetable. Evidence of post-filing job creation, however, while not necessary, can support the credibility of the timetable. In this case, the record does not contain any evidence of job creation that might bolster the credibility of the timetable.

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to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.

Cite as *Matter of Y-W-*, ID# 36914 (AAO Nov. 9, 2016)