



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

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

MATTER OF Q-T-

DATE: MAR. 25, 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. *See* Immigration and Nationality Act (the Act) § 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 that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.

The Chief, Immigrant Investor Program Office, denied the petition. The Chief concluded that the Petitioner had not made an at-risk investment.

The matter is now before us on appeal. On December 10, 2015, we issued a notice of intent to dismiss and request for evidence (NOID/RFE), however, the Petitioner did not respond.

Upon review, we will summarily dismiss the appeal as abandoned.

I. LAW

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 [he or she] 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
- (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).

To qualify for this benefit, the implementing regulations provide that an investor must submit materials to show that he or she has invested, or is in the process of investing, the required amount of capital. 8 C.F.R. 204.6(j)(2). Such capital must also be at risk for the purpose of generating a return

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on the investment. *Id.* To meet this requirement, the invested funds must be used for the undertaking of actual business activity:

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.

Matter of Ho, 22 I&N Dec. 206, 209-10 (AAO 1998).

II. ANALYSIS

The petition is based on an investment in [REDACTED] the new commercial enterprise (NCE), located in a targeted investment area such that the minimum investment amount is \$500,000. 8 C.F.R. § 204.6(f)(2). As noted above, we issued a NOID/RFE raising several inconsistencies in the information about the number of investors, the equity nature of the investment, the location of the business, and the use of the invested funds. A failure to respond to a NOID or RFE may be summarily dismissed as abandoned, dismissed based on the record, or dismissed for both reasons. 8 C.F.R. § 103.2(b)(13). In this case, we issued a NOID/RFE on December 10, 2015, which informed the Petitioner that he must answer within 87 days. As of today, over 100 days later, we have not received a response. The Petitioner has therefore abandoned his appeal and we summarily dismiss it for that reason. In addition to abandoning the appeal, the Petitioner has failed to establish eligibility for the benefit sought due to the numerous issues raised in our notice.

A. Required Investment

As noted above, a petitioner must show he or she has invested, or is in the process of investing, the required amount of capital. 8 C.F.R. § 204.6(j)(2). In this case, the record contains conflicting information relating to the Petitioner's investment and related ownership interest in the NCE, casting doubt on the credibility of that evidence. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The NCE's August 2012 business plan, August 10, 2012, Minutes of Board of Directors Meeting, and an August 16, 2012, cover letter all list five shareholders for the NCE. These documents showed that four of the five shareholders contributed capital in the amount of \$500,000. Stock certificates for the NCE dated August 10, 2012, and a stock transfer ledger confirmed that each of the four capital-contributing shareholders (including the Petitioner) owns 24,000 shares (amounting to 12 percent) and that the fifth shareholder, [REDACTED] owns 104,000 shares (amounting to 52 percent). Page three of the August 16, 2012, cover letter provided that all four capital-contributing shareholders are seeking classification as immigrant investors. The NCE's bank statements for an account ending in [REDACTED] indicated wire transfers, totaling \$2,087,900, from the four capital-contributing shareholders: (1) a \$543,950 wire from the Petitioner on June 20, 2012; (2) a \$543,950

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wire from [REDACTED] on June 25, 2012; (3) a \$500,000 wire from [REDACTED] on August 2, 2012; and (4) a \$500,000 wire from [REDACTED] on August 9, 2012. According to these filings, the NCE's total shareholder investment was at least \$2 million in August of 2012.

The NCE's 2012 tax returns are not, however, consistent with a total capital investment of at least \$2 million. According to Schedule L of the NCE's 2012 U.S. Corporation Income Tax Return Internal Revenue Service (IRS) Form 1120, the NCE had \$1,588,000 in common stock and a \$500,000 loan from shareholders as of April 30, 2013. Schedule L of the NCE's 2012 California Corporation Franchise or Income Tax Return (Form 100) reflected the same information. We raised this issue in our notice of intent to dismiss and request for evidence. The Petitioner has not, however, responded with information reconciling the apparent discrepancies or providing clarification to show that he has in fact invested the necessary amount in, and not loaned the amount to, the NCE.

Additional inconsistencies exist between the NCE's tax documents and the August 2012 business plan, raising general doubts about the veracity of the information provided regarding the Petitioner's investment. *Ho*, 19 I&N Dec. at 591. According to Schedule G of the NCE's 2012 Form 1120, as of April 30, 2013, the NCE has three shareholders: the Petitioner owned 34 percent; [REDACTED] owned 33 percent; and [REDACTED] a non-capital contributing shareholder, owned 33 percent. This information conflicts with the number of shareholders and the ownership percentages listed in the August 2012 business plan, which had four shareholders owning 24,000 shares (amounting to 12 percent) and a fifth shareholder owning 104,000 shares (amounting to 52 percent).

In response to a notice of intent to deny issued by the Chief, the Petitioner submitted a revised business plan, dated November 7, 2014. According to pages 10 and 11 of the revised business plan, the NCE has a total of six shareholders. The revised business plan provided that [REDACTED] owns 52 percent of the NCE; and the remaining five shareholders – [REDACTED] and you – each owns 12 percent of the NCE. The revised business plan therefore stated that the six shareholders own a total of 112 percent of the shares. As demonstrated by these examples, the Petitioner has not supplied consistent, credible evidence pertaining to his investment in the NCE. Once inconsistencies are identified, a petitioner must resolve them with independent, objective exhibits. *Ho*, 19 I&N Dec. at 591-92. As the Petitioner has not responded to the issues raised, he has not offered sufficient, reliable documentation to show the investment in the NCE needed for eligibility.

B. Capital Placed at Risk

As examples of what constitutes sufficient risk, merely establishing and capitalizing a new commercial enterprise and signing a commercial lease are insufficient to show that the invested capital is at risk. *Ho*, 22 I&N Dec. at 209-210. The Petitioner provided documents, including tax filings, bank records, and invoices, that demonstrate the NCE's place of business is [REDACTED] California. The Petitioner supplied a Lease Agreement dated August 6, 2012

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between the NCE and [REDACTED]. As we noted in our NOID/RFE, however, [REDACTED] indicates that the property covered by this lease is owned by [REDACTED] who appears to be the NCE's majority shareholder. Moreover, the California Secretary of State website confirms that [REDACTED] is currently in "suspended" status with the Franchise Tax Board and "cannot legally transact business" in California. Although we raised these issues regarding the validity of the Lease Agreement, the Petitioner has not filed a response or explanation addressing our concerns. As stated previously, the submission of such material casts doubt on the credibility of the evidence in the record. *Ho*, 19 I&N Dec. at 591.

In addition, the Petitioner has not filed sufficient evidence confirming that his \$543,950 wired to the NCE's account ending in [REDACTED] on June 20, 2012, has been or will be used for the actual undertaking of business activity. The NCE's bank statements for the account reflect multiple deductions for substantial amounts that do not appear to be business-related. For example, the bank documents indicate: (1) a \$250,000 check payable to [REDACTED] drafted on August 13, 2012; (2) a \$420,000 check payable to [REDACTED] drafted on August 21, 2012; (3) a \$190,000 check payable to [REDACTED] drafted on August 22, 2012; (4) a \$200,000 check payable to [REDACTED] drafted on December 3, 2013; and (5) a \$200,000 check payable to [REDACTED] drafted on December 11, 2013. As noted above, the Lease Agreement with [REDACTED] does not appear to be valid. Furthermore, although raised in the NOID/RFE, the Petitioner has not provided any additional information regarding the substantial expenditures to show that they went toward legitimate business expenses. As a result, the Petitioner has not met his burden of proof in establishing that his investment is at risk and being used in the actual undertaking of legitimate business activities.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the dismissal. As the Petitioner failed to respond to our notice of intent to dismiss and request for evidence, we dismiss the appeal for abandonment, as well as on the record. 8 C.F.R. § 103.2(b)(13). It is the Petitioner's burden to establish eligibility for the immigration benefit sought. § 291 of the Act. Here, he has not met that burden.

ORDER: The appeal is summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

Cite as *Matter of Q-T-*, ID# 13327 (AAO Mar. 25, 2016)

¹ We noted in our NOID/RFE to dismiss the numerous variations of this entity's name appearing in the record.