



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

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

MATTER OF H-Z-

DATE: JUNE 3, 2016

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: FORM I-526, IMMIGRANT PETITION BY ALIEN ENTREPRENEUR

The Petitioner, an individual, seeks classification as an immigrant investor. *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 new commercial enterprise that will benefit the United States economy and create at least 10 full-time positions for qualifying employees. Foreign nationals may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (Appropriations Act) section 610, as amended.

The Chief, Immigrant Investor Program Office, denied the petition. The Chief concluded that the Petitioner had not established the lawful source of her funds based on concerns about the evidence of her ownership in an Uruguayan company, her work for that company, and the value of any interest she had in that company.

The matter is now before us on appeal. In her appeal, the Petitioner submits additional evidence that addresses the omissions the Chief noted and maintains that he erred by applying an incorrect standard.

Upon *de novo* review, we will sustain 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. Specifically, 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:

(b)(6)

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- (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
- (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).

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

- (3) 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;
 - (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.

II. ANALYSIS

The Petitioner bases her eligibility on an investment of \$500,000 in [REDACTED] the new commercial enterprise (NCE). The NCE is affiliated with US Commercial Regional Center, which USCIS designated as a regional center.¹ The sole issue is whether the Petitioner demonstrated the lawful source of her invested funds.

In the initial filing, the Petitioner explained that she invested funds that originated from her interest in [REDACTED] a company in Uruguay. Specifically, she affirmed that in September 2007 she received a 10 percent interest in that company for her translation and consulting services. She

¹ The required investment amount is \$500,000 as the NCE will be doing business in a targeted employment area (TEA). 8 C.F.R. § 204.6(f).

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initiated these services at the request of a Chinese company, [REDACTED] which was interested in investing in South America. She initially contacted manufacturing company [REDACTED] whose owners reorganized [REDACTED] as a liason company to partner with the Petitioner and distribution company [REDACTED] to manufacture and sell [REDACTED] brand cars. According to the Petitioner, she then sold her ten percent interest in [REDACTED] to her fellow shareholders, [REDACTED] and [REDACTED] in June 2011 for \$600,000. The record contains a resolution by [REDACTED] to release profits earned by [REDACTED] and [REDACTED] to the Petitioner, and traces the funds from [REDACTED] to the Petitioner and then to the NCE.

With respect to [REDACTED] the Chief found that the ownership documents for that entity did not reference both the company and the shareholders, and also showed that [REDACTED] and [REDACTED] formed [REDACTED] in 2003. In addition, the Chief acknowledged a letter from a notary in Uruguay, but concluded that the notary did not explain the basis of her knowledge of [REDACTED]. The Chief also expressed concern that the record did not confirm the Petitioner's services for [REDACTED]. Finally, the Chief questioned the source and probative value of the automobile sales data used to estimate the value of the Petitioner's interest in [REDACTED] at the time of sale.

A petitioner cannot demonstrate the lawful source of funds merely by offering 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). Without documentation of the path of the funds, a petitioner cannot meet her burden of establishing that the funds are her own funds. *Id.* In addition, a petitioner must corroborate her affirmations. *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)(upholding a finding that a petitioner had failed to show 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).

Here, on appeal, the Petitioner offers the complete registry for [REDACTED] a report from [REDACTED] a compliance consultancy firm based in Argentina and Uruguay; confirmation of her role for [REDACTED] from the General Manager of that company; and the registry and financial statements for [REDACTED]. For the reasons discussed below, these items sufficiently show the Petitioner's interest in [REDACTED] her consultancy services for [REDACTED] interest in [REDACTED] and [REDACTED] finances.

The record now documents the entire ownership history of [REDACTED] and the Petitioner's services for that company. She initially supplied the 2003 Articles of Incorporation whereby [REDACTED] and [REDACTED] formed [REDACTED] and portions of the registry for that company. In a joint affidavit supporting the Petitioner's response to the Chief's request for evidence, [REDACTED] and [REDACTED] affirm that the Petitioner coordinated their dealings with [REDACTED]. The record now contains the full registry for [REDACTED] which shows that each page of the extra wide registry is represented by two photocopies in the record, explaining why the Chief noted page numbers on only some of the

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registry pages (those representing the right half of those pages). According to this submission, [REDACTED] and [REDACTED] purchased shares in [REDACTED] in 2005. The registry includes the Petitioner as a shareholder and meeting participant beginning in 2007. The register no longer names the Petitioner as a shareholder beginning in June 2011, consistent with the previously provided Shares Sale-Purchase Agreement whereby the Petitioner sold her shares in [REDACTED] to [REDACTED] and [REDACTED] for \$600,000 on June 17, 2011. Finally, [REDACTED] the General Manager of [REDACTED] confirms on appeal that the Petitioner arranged the meetings between his company and [REDACTED] and [REDACTED]. This new evidence establishes by a preponderance of the evidence that the Petitioner had a 10 percent interest in [REDACTED] based on her services.

In addition, the registry and financial statements for [REDACTED] now in the record corroborate the Petitioner's explanation for the value of her shares in [REDACTED]. Specifically, in September 2007, [REDACTED] and [REDACTED] appear as shareholders of [REDACTED] and in February 2009, [REDACTED] is also named as a shareholder with a 48 percent interest. [REDACTED] remained a shareholder until September 2011, three months after the Petitioner sold her interest in [REDACTED]. The 2012 balance sheet for [REDACTED] lists a total net worth of 23,716,012 Uruguayan Pesos as of June 30, 2011, or \$1,281,950.² The [REDACTED] report, page 4, calculates the present value of [REDACTED] as between \$8 million and \$29 million, with the Petitioner's 4.8 percent share³ ranging between \$386,386 and \$1,413,484. The report concludes that a \$600,000 price for her interest was reasonable and, in fact, correlates with how [REDACTED] performed in the years that followed the sale. This item, from a compliance consultancy firm that examined [REDACTED] financial statements, which are also in the record, meets the Petitioner's burden of substantiating the reasonable nature of the price she received for her shares.

In summary, the new evidence on appeal overcomes the Chief's concerns regarding the Petitioner's ownership in [REDACTED] the work she performed to acquire that interest, and the value of her shares at the time of sale.

III. CONCLUSION

The Petitioner has invested the requisite amount of lawfully obtained capital in a new commercial enterprise that will benefit the United States economy and create at least 10 full-time positions for qualifying employees. Therefore, the Petitioner has met the burden of proof necessary to establish eligibility for the benefit sought. Sections 203(b)(5), 291 of the Act.

ORDER: The appeal is sustained.

Cite as *Matter of H-Z-*, ID# 17137 (AAO June 3, 2016)

² According to <https://www.oanda.com/currency/converter/>, accessed May 17, 2016, and incorporated into the record of proceeding.

³ Calculated based on the Petitioner's 10 percent share of [REDACTED] which in turn had a 48 percent interest in [REDACTED]