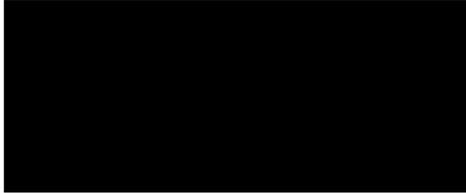


identifying information deleted to
protect the privacy of the petitioner.
Invasion of personal privacy
PUBLIC COPY



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services



B7

DATE: JUN 25 2012 Office: CALIFORNIA SERVICE CENTER

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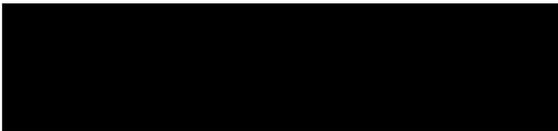


IN RE: Petitioner:



PETITION: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the preference visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5). The petitioner's claimed investment is through a U.S. Citizenship and Immigration Services (USCIS) designated regional center, Gateway Freedom Funds Regional Center, pursuant to section 610(c) of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. [REDACTED] Stat. 1874 (1992), as amended by section 116 of Pub. L. No. [REDACTED] Stat. 2440 (1997); section 402 of Pub. L. No. [REDACTED] Stat. 1637 (2000) and section 11037 of Pub. L. [REDACTED] Stat. 1758 (2002). USCIS designated Gateway Freedom Funds Regional Center as a regional center on October 25, 1996. The petitioner's investment is through an affiliated limited partnership, [REDACTED] Limited Partnership, purportedly located in a targeted employment area for which the required amount of capital invested has been adjusted downward. The petitioner's investment was intended to construct a building and manage the property.

The director determined that the petitioner had failed to demonstrate the lawful source of his invested funds. On appeal, counsel asserts the lawful source of funds was previously demonstrated through the submitted evidence. For the reasons discussed below, the AAO finds that the petitioner has not overcome the director's grounds for denial. As an additional issue, the AAO finds that the petitioner failed to establish that his investment is in a business located in a targeted employment area for which the required amount of capital invested has been adjusted downward to \$500,000.

I. LAW

Section 203(b)(5)(A) of the Act, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), provides classification to qualified immigrants seeking 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
- (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 regulation at 8 C.F.R. § 204.6(j) states, in pertinent part, that "[A] petition must be accompanied by evidence that the alien has invested, or is actively in the process of investing, capital obtained through lawful means within a regional center designated by the Service." Moreover, the regulation at 8 C.F.R. § 204.6(j)(3) provides that "[t]o 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. PROCEDURAL AND FACTUAL BACKGROUND

The petitioner filed the petition on March 22, 2011, supported by the following types of evidence related to the lawful source of the invested capital:

1. A Certificate of Employment, dated January 30, 2011, from [REDACTED] Human Resources Department at Sichuan Honyee Industrial Group Corporation, Ltd. (SHIGC);
2. A Personal Maximum Amount Mortgage, Margin Amount Loan Contract from China Minsheng Banking Corporation, Ltd. (CMBC);
3. A certificate regarding registration of house property from the Shuang Liu County Administration Bureau for Real Estate;
4. A Residential Appraisal Report for the petitioner's property;
5. A document, dated January 24, 2011, from [REDACTED] explaining the exchange and deposit of Renminbi (RMB) 3,900,000 from China Merchants Bank (CMB) to Hongkong and Shanghai Banking Corporation Limited (HSBC);
6. Documentary evidence reflecting a wire transfer on January 24, 2011, of RMB 3,900,000 from CMBC to [REDACTED] at China Merchants Bank Headquarters (CMBH);

7. An account statement, dated January 25, 2011, from CMBC regarding the petitioner's bank account;
8. Documentary evidence, dated January 26, 2011, from HSBC regarding a wire transfer from [REDACTED] to the petitioner; and
9. Documentary evidence reflecting a wire transfer on January 27, 2011, of \$530,030 from HSBC to Washington Trust Bank.

On September 15, 2011, the director issued a request for evidence (RFE). Specifically, the director requested evidence demonstrating that the invested capital was obtained through lawful means as required pursuant to the regulation at 8 C.F.R. § 204.6(j). The petitioner responded on October 25, 2011, and submitted the following documentation:

1. A letter, dated June 1, 2006, from SHIGC entitled, "A Decision to reward [the petitioner] and others in kind";
2. Enterprise Legal Representative Business Licenses for SHIGC;
3. An Enterprise Legal Representative Business License for Chengdu Wanhua Real Estate Development Corporation, Ltd. (CWREDC);
4. Articles of Association for CWREDC;
5. A Commodity House Purchase and Sales Contract;
6. An application for purchase of house for petitioner and his wife from CWREDC;
7. An Immovable Property Sales Invoice of Chengdu City CWREDC issued to the petitioner and his wife;
8. A Deed Tax Paid Certificate for the petitioner's property;
9. A General Tax-Paid Certificate for the petitioner's property; and
10. The petitioner's "Statement regarding the Purchase of the Real Estate Located in Lushan International Community."

On November 8, 2011, the director denied the petition determining that the petitioner had failed to demonstrate the lawful source of the petitioner's invested funds. On November 29, 2011, the petitioner filed an appeal with U.S. Citizenship and Immigration Services (USCIS). On appeal, counsel asserts that the petitioner demonstrated the lawful source of the invested funds based on a loan from CMBC that was secured by real estate owned by the petitioner and his wife.

III. ISSUES ON APPEAL

A. Source of Funds

A petitioner must provide evidence that the capital the alien has invested, or is actively in the process of investing, was obtained through lawful means. 8 C.F.R. § 204.6(j). The regulation at 8 C.F.R. § 204.6(j)(3) lists the type of evidence a petitioner must submit, as applicable, including foreign business registration records, business or personal tax returns, or evidence of other sources of capital. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *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 “hypertechnical” 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).

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting 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, the petitioner cannot meet his burden of establishing that the funds are his own funds. *Id.*

At the initial filing of the petition, counsel claimed:

The Petitioner and his wife . . . signed a loan contract with [CMBC] on September 28, 2009. . . . It is further stated in Part One, Chapter 5 of the loan contract that the loan is secured by the real estate property owned by the [petitioner and his wife] and the value of the property is about RMB 8.2 million. . . . The Petitioner was able to acquire the aforementioned property based upon his employment income. The Petitioner has been employed by SHIGC since 2001.

In the director’s RFE, the director advised that “[e]vidence was not provided to show the petitioner’s purchase of the real property that is securing the loan for 4 million RMB.” In addition, the director indicated that according to the petitioner’s employment letter, the petitioner earned the sum of 6.5 million RMB during the past six years at SHIGC. However, as the property was purchased in August 2008, there was insufficient evidence to demonstrate that the petitioner had sufficient funds to pay for the property. The director asked for evidence of the following: (1) the actual property purchase; (2) the source of funds for the petitioner’s property purchase, and (3) that the petitioner’s income was used to purchase the property.

In response to the director’s RFE, the petitioner submitted additional documentary evidence. Counsel claimed that the petitioner did not purchase the property but that his employer, SHIGC,

“decided to reward each top-level manager, who had worked with passion and enthusiasm with a house located in Lushan International Community developed by [CWREDC].”

In determining that the petitioner failed to demonstrate his lawful source of funds for the investment of the commercial enterprise, the director stated:

No justification is provided to explain why the petitioner presented evidence with the filing of the petition to reflect that he paid for the real property from earned income accrued during his years of employment. No rationale was presented to explain why the Certificate of Employment provided with the petitioner which sets forth the income earned by the petitioner does not reference the award of a house in June 2006 with a value in excess of 2 million RMB.

Moreover it was not explained why the “Decision to Reward” document dated June 2006 was not submitted with the petition to explain how the petitioner acquired the real property which is collateral for the 4 million RMB loan.

On appeal, counsel submitted no new documentary evidence, claiming that:

The [previously submitted] evidence . . . clearly shows that there are no discrepancies. The petitioner has shown that the property which was the collateral for the loan was a bonus given to him by his Employer. The Service is using the alleged and/or imagined discrepancies to cast doubt on the evidence submitted by the Petitioner. However, it is impossible for the Petitioner to explain why there are no discrepancies when there are none. The Petitioner cannot be expected to respond to faulty judgments and conclusions made by the Service.

Counsel initially claimed that the petitioner acquired his property “based upon his *employment income* [emphasis added].” Counsel did not claim that the petitioner’s property was based upon an award from his employer, SHIGC. Furthermore, according to the Certificate of Employment from [REDACTED], the petitioner “was rewarded for his pragmatic, preciseness, aggressive style of work” and “received his wages in amount of 6,500,000RMB including salary, bonus and some other allowance.” Although [REDACTED] indicated that the petitioner was rewarded, he failed to indicate how the petitioner was rewarded. Moreover, [REDACTED] did not elaborate on the amount of the petitioner’s bonus or explain or define “some other allowance.” On appeal, counsel claims that “the petitioner never indicated that he paid for the property; rather, the Petitioner stated that he ‘acquired’ the property based upon his employment.” On the contrary, *counsel* claimed that the petitioner acquired the property based on his employment *income* rather than just his employment. Moreover, the initial Certificate of Employment made no mention of SHIGC having awarded the petitioner a house. It is clear that in counsel’s letter submitted in support of the petition that counsel claimed that the petitioner’s property was acquired based on the petitioner’s income from his employer. There was no indication that the petitioner acquired the property as an award from SHIGC. In response to the RFE, rather than supporting the initial claim that the petitioner acquired the property based upon his employment income, counsel claimed for the first time that the petitioner’s property was

acquired as an award from SHIGC. Neither counsel nor the employer claimed that SHIGC gave the petitioner the property as an award until after the director questioned the petitioner's ability to purchase the property based on his income. In the case here, counsel's meager interpretation of the petitioner's own documentation is insufficient to reconcile the inconsistencies at the initial filing of the petition and in response to the director's RFE.

Moreover, according to the "Commodity House Purchase and Sales Contract," dated September 11, 2006, the value of the property was RMB 2,162,277 on that date. Specifically, according to Article 4 of the contract, the value of the property is calculated by "the housing unit price (RMB) 4732.598 yuan per square meter, the total amount (RMB) ¥2,162,277." Further, according to the "Immovable Property Sales Invoice of Chengdu City," dated May 29, 2008, and the "Deed Tax Paid Certificate," dated July 11, 2008, and "General Tax-Paid Certificate," dated July 11, 2008, the property was transferred for ¥2,162,277. According to the "Personal Maximum Amount Mortgage, Margin Amount Loan Contract," dated September 28, 2009, the loan was secured based on the mortgaged property of the petitioner. Specifically, "the value of mortgaged property under this contract is RMB (in words) Eight Million Two Hundred and Thirty Three Thousand Two Hundred (in figures) 8,233,200.00." Approximately 14 months from the time the petitioner acquired the property to the assessment of the property for the loan, the petitioner's property nearly quadrupled in price. The petitioner failed to submit any documentary evidence demonstrating the reason for the quadrupled value of the property in a little over a year. Even if the AAO ignored the 8,233,200 RMB appraisal, the value of the property when the petitioner acquired it was RMB 2,162,277 and the amount of the loan 14 months later was almost twice as much - RMB 4,000,000. There is no evidence indicating that CMBC would have issued a loan secured on mortgage property that was valued at approximately half of the amount of the loan.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In the case here, the petitioner has not provided competent objective evidence overcoming the inconsistencies discussed above.

Furthermore, as indicated above in items 5 – 8 at the initial filing of the petition, the petitioner submitted documentary evidence reflecting wire transfers with [REDACTED]. On January 24, 2011, the petitioner transferred RMB 3,900,000 from his CMBC account to [REDACTED] CMBH account. On January 26, 2011, [REDACTED] transferred USD 590,900 from his HSBC account to the petitioner's HSBC account. However, the petitioner failed to submit any documentary evidence regarding the transfer of funds between [REDACTED] CMBH account and [REDACTED] HSBC

account. As the petitioner has not sufficiently documented the path of his funds, the petitioner cannot meet his burden of establishing that the invested funds are his own funds.

For the reasons stated above, the petitioner failed to establish that he invested capital obtained through lawful means pursuant to the regulation at 8 C.F.R. § 204.6(j)(3).

B. Minimum Investment Amount

The regulation at 8 C.F.R. § 204.6(e) states, in pertinent part, that a targeted employment area is one which, "at the time of investment," is an area that has experienced unemployment of at least 150 percent of the national average rate. The regulation at 8 C.F.R. § 204.6(j)(6)(ii) provides that a petitioner must document a targeted unemployment area through the submission of data regarding the county or a letter from an authorized body of the government of the relevant state. *See also* 8 C.F.R. § 204.6(i).

As stated above, the petitioner indicated on the petition that he was investing in a targeted employment area, specifically three census tracts within King County, Washington. The petitioner filed the petition on March 22, 2011, at which time he had placed his investment funds in escrow. The petitioner submitted a May 18, 2010 letter from [REDACTED] Geographic Information Systems Specialist at the Washington State Employment Security Department. [REDACTED] letter, predating the petition by 10 months and relying on data for 2009, designates three contiguous census tracts in King County, Washington. The fact that an area was once an area of high unemployment does not mean that it still is. *See Matter of Soffici*, 22 I&N Dec. at 159. The petitioner failed to provide an updated letter from [REDACTED] with current unemployment data or, in the alternative, recent unemployment data for King County as a whole.

The petitioner failed to establish that his investment is in a business located in a targeted employment area for which the required amount of capital invested has been adjusted downward to \$500,000. Thus, the minimum investment amount in this case is \$1,000,000. The petitioner does not claim to have invested or to be actively in the process of investing that amount.

IV. SUMMARY

For all of the reasons set forth above, considered in sum and as alternative grounds for denial, this petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.