TO: USCIS

FROM: SUZANNE LAZICKI, LUCID PROFESSIONAL WRITING

DATE: JANUARY 23, 2023

SUBJECT: OMB Control Number 1615-0026

USCIS Docket ID USCIS-2007-0021

Form I-526

Who am I: I am a business plan writer who has written business plans for over 100 direct EB-5 projects since 2010, and who has been distressed to witness multiple clients with clean background and successful job-creating business nevertheless fail to get EB-5 benefits due to capricious adjudications enabled by lack of clarity in Form I-526 regarding required evidence.

Comment Topic:

- OMB Control Number 1615-0026, USCIS Docket ID USCIS-2007-0021.
    - Form I-526 and Form I-526 Instructions
        - Part 3 "NCE Ownership and Capital Investments (Questions 15-19)

Comment Summary: The Form I-526 Instructions should be updated with instructions for Part 3 "NCE Ownership and Capital Investments (Questions 15-19). The Instructions should specify what supporting evidence--if any--the petitioner is required to provide regarding the identity and capital contributions of non-EB-5 investors in the NCE. Both petitioners and USCIS adjudicators need to be on the same page as to whether or not this extremely consequential claim is true: "A petitioner in a standalone case must demonstrate the lawful source of funds for all non-EBS capital that is invested in the NCE." If USCIS holds to this claim, then Form I-526 should specify the source of funds evidence required to demonstrate lawful source of non-EB-5 capital. If the claim is not justified (as I would argue), then the Form is correct to request no such demonstration, but in that case USCIS needs to correct its adjudicator training materials (the source of the quoted claim) and adjudication worksheets so that internal guidance matches the public Form instructions and petitioners are no longer surprised with idiosyncratic non-EB-5-source-of-funds evidence requests at the I-526 RFE stage

Why the current mismatch between public Form I-526 instructions and internal USCIS guidance is a problem.

Because the Form I-526 and Instructions are currently silent on the topic of evidence for non-EB-5 investor source of funds: (1) petitioners do not know upfront to try to collect and file such

evidence, and (2) adjudicators are free to fill the silence with capricious and thus unpredictable evidence requests.

"Excuse me sir, you don't know me, but can you please give me copies of your _____ personal identity documents and _____ personal financial documents so I can pass them on to the U.S. immigration service in a matter that has nothing to do with you, except that you happen to have invested in the same project that I did?" If direct EB-5 eligibility actually depends on petitioners making this extremely difficult ask, then USCIS must at least instruct petitioners upfront how to fill in the blanks of that ask. Otherwise, it's impossible for petitioners to gather the correct evidence when they have a chance and file I-526 that are approvable at the time of filing. And there's maximum scope for arbitrary and capricious decision-making by USCIS. Currently, the silence in official instructions leaves adjudicators free to tell petitioners who submit I-526 with nothing on non-EB-5 source of funds that they should've submitted a narrative explanation, to those who submit narrative explanations that they should've submitted bank statements, to those who submit bank statements that actually the requirement is tax returns, to those who submit one year's tax return that actually the requirement is five years of tax returns, and so on.

I saw one direct EB-5 business plan client get an I-526 denial due to being naturally unable to respond to an RFE demanding tax returns from an A-list Hollywood actor who happened to have invested in the same very successful project. If only Form I-526 had stated that such evidence was required, at least my client would have been empowered to try upfront to obtain it, and to determine before committing to invest that the required EB-5 evidence would be impossible to obtain.

Why this statement is unjustified: "A petitioner in a standalone case must demonstrate the lawful source of funds for all non-EBS capital that is invested in the NCE."

In context of RFEs, USCIS has justified evidence requests for non-EB-5 investor source of funds in stand-alone cases with reference to 8 CFR 204.6 (g) (1)

> " ..... 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 classification under section 2 0 3 (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.*"

Points to note:

- 8 CFR 204.6 (g) (1) does not specify "lawful source of funds for all **non-EBS capital**" but "**source(s) of *all"* capital**" in the NCE. The language in 8 CFR 204.6 (g) (1) indicates any enterprise with several

owners, and makes a statement about all capital. The language does not support making direct investors but not regional center investors liable for the sources of *all* capital invested.

- In the regional center context, USCIS does not deny EB-5 Investor A in the NCE because EB-5 Investor B in the NCE is found to have unlawful source of funds. What then is the justification for denying EB-5 Investor A in a standalone project over questions about Investor B? "All capital" doesn't mean "all capital"?
- **Core question: Does 8 CFR 204.6 (g) (1) mean that each petitioner's eligibility is dependent not only on his own source of funds, but also on the lawful source of *all capital* invested in the NCE? If yes, then apply this answer consistently, update I-526 to request SOF for all investors, and deny every NCE investor when another NCE investor has a source of funds problem, whether EB-5 or non-EB-5. If no, 8 CFR 204.6 (g) (1) couldn't have that meaning (and it couldn't, or EB-5 would be impossible), then apply that answer consistently, and stop the unfair, inconsistent, and non-transparent evidence requests applied only to petitioners in projects with non-EB-5 investment.**

Exhibits (following pages)

1. Pages from a presentation of EB-5 training materials in 2019 that privately expressed a new USCIS interpretation that I-526 routinely requires non-EB-5 source of funds evidence
2. Examples of I-526 RFE evidence requests for non-EB-5 source of funds evidence
3. Example of an AAO decision chiding the petitioner for not knowing that USCIS expected I-526 to be filed with source of funds documentation for other NCE investors (and how would she know, if Form I-526 did not request such documentation?)

U.S. Citizenship and Immigration Services

Lawful Source of Funds

In EB-5 Adjudications

05/10/2019

IIUSA
INVEST IN THE USA

Non-EB-5 Sources of Capital Invested in NCE

U.S. Citizenship and Immigration Services

"…..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 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.*" 8 CFR 204.6(g)(1) (emphasis added).

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Non-EB-5 Sources of Capital Invested in NCE

- **Standalone context**: A petitioner in a standalone case must demonstrate the lawful source of funds for all non-EB5 capital that is invested in the NCE.
- **Regional-Center context**: A petitioner in a regional center case must demonstrate the lawful source of funds for all non-EB5 capital that is invested in the NCE. If the non-EB5 capital is invested in the JCE and not the NCE, then 204.6(g)(1) does not apply.
  - In some cases, the NCE and the JCE are the same entity. If the NCE and the JCE are the same entity, then the petitioner must demonstrate the lawful source of funds for non-EB5 investments into the NCE/JCE.

Non-EB-5 Sources of Capital Invested in NCE

U.S. Citizenship and Immigration Services

- General considerations for both standalone and regional center cases:
  - 204.6(g)(1) only applies to investments made by owners of the enterprise, because 204.6(g)(1) states ". . . provided that the source(s) of all capital invested is identified and all invested capital has been derived by lawful means" (emphasis added).
  - Note the language in the regulation, "….and non-natural persons, both foreign and domestic…."

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Non-EB-5 Sources of Capital Invested in NCE

- Example: A petitioner is investing $500k in a standalone NCE that is operating a restaurant. The petitioner claims that a non-EB-5 investor is investing $200k for 50% of the shares in the NCE. Although the partner is not seeking EB-5 classification, the petitioner is still required to provide evidence to demonstrate the lawful source of the partner's $200k investment.

Non-EB-5 Sources of Capital Invested in NCE

- Example: A petitioner is investing $500K in a regional center NCE that is a limited partnership. The NCE is pooling funds from 10 EB-5 investors who will be limited partners in exchange for their investment. The general partner of the NCE, who is not an EB-5 investor, has also invested in the NCE. The petitioner must provide evidence to demonstrate that capital invested by the general partner has been derived by lawful means.

From December 2019 RFEs on direct EB-5 I-526

Section B. Invested Capital was Obtained Through Lawful Means

Subsection: 8 C.F.R. 204.6(g)

8 C.F.R. 204.6(g)(l) states:

> The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien entrepreneur by more than one investor, provided each petitioning investor has invested or is actively in the process of investing the required amount for the area in which the new commercial enterprise is principally doing business, and provided each individual investment results in the creation of at least ten full-time positions for qualifying employees. 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 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.

Petitioner has not submitted sufficient documentary evidence to both [a] identify and [b] demonstrate that all the invested capital (both EB5 and non-EB-5) in the NCE derived from lawful means. The existing record contains the following evidence:

- Business Plan
- Certificate and Articles of Incorporation of Partnership for NCE
- Private Placement Memorandum
- Operating Agreement
- Subscription Agreement

The Business Plan and Private Placement Memorandum lists the following individuals/entities (besides the petitioner) as shareholders of the NCE:

- [redacted]

Please submit complete bank statements of the NCE demonstrating all investments, to include the investment dates of additional money into the NCE by all EB-5 and non EB-5 investors. Further, petitioner has not identified the source of the investment capital belonging to the other investors and that the capital investment of other investors derived from lawful means. Please also include a chart/graph demonstrating the exact investment dates of all capital into the NCE to include the exact investment dates (month, day, and year) of all EB-5 and non EB-5 investment capital. Please also include the percentage ownership of each individual(s)/entity(ies) that has stake in the NCE.

USCIS must be able to determine that it is more likely than not that the capital which has been invested by Petitioner or which Petitioner is actively in the process of investing is capital obtained through lawful means, and per 8 C.F.R 204.6(g)(l), includes all investors who have ownership interests in the NCE. Accordingly, USCIS requests additional evidence to establish the lawful source of the investment funds from all investors.

In addition, please explain with documentary evidence if the NCE is partially owned by any other non EB-5 investors/entities.

Please also provide government-issued identification for each and every of the non EB-5 individuals and entities [business licenses issued by a government entity] that have ownership interest in the NCE.

USCIS notes that the Form I-526 states that Petitioner is __% owner in the NCE.

Please provide documentary evidence demonstrating for each of the below entities: [a] the lawful business activities and the nature of each entities day to day business (e.g. filed federal income taxes and narrative about each entity), [b] a complete list of individuals/entities with ownership interest in each entity, [c] any and all websites for each entity, [d] current physical address of each entity, and [e] a business registration document issued by a government entity (e.g. printout from a State's website).

- [list of NCE member names redacted]

From a September 11, 2020 RFE on a Direct EB-5 I-526

A. Invested Capital was Obtained Through Lawful Means

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6(e). Petitioner must demonstrate by a preponderance of the evidence that the capital was his or his own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); see also Matter of Ho, 22 I&N Dec. at 210. To show that the capital was his or his own, Petitioner must document the path of the funds. Matter of Izummi, 22 I&N Dec. at 195.

The evidence in the record does not establish that the capital which has been invested by other shareholders are capital that has been obtained through lawful means. The record contains the following evidence:

[redacted]

The entire amount of invested capital must be derived by lawful means. The regulation at 8 C.F.R. § 204.6(g), which discusses multiple investors in an 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.

The regulation requires that all sources of capital invested in the NCE must be identified and determined to be from a lawful source. Therefore, the source of funds for the other shareholders must be accounted for to meet the preponderance of the evidence.

USCIS must be able to determine that it is more likely than not that the capital which has been invested by the remaining shareholders or which the remaining shareholders are actively in the process of investing is capital obtained through lawful means. Accordingly, USCIS requests additional evidence to establish the lawful source of the remaining shareholders investment funds into the NCE.

To determine the lawful source of the remaining shareholder's investment funds, additional evidence is required. Petitioner must submit, as applicable, the following evidence in order to comply with 8 C.F.R. § 204.6(g):

A narrative statement backed by legal documentation showing the source of funds used by the remaining shareholders to gain their interest in the NCE. The remaining shareholders includes [petitioner name] maintaining 50% of the NCE, [another individual], who maintains 25% interest in the NCE, and [an entity name], that maintains 12.5% interest in the NCE. This also includes any shareholder not mentioned by name here.

From December 2019 RFE on a Direct EB-5 I-526

Section E. Invested Capital was Obtained Through Lawful Means

a. NCE's total funding

8 C.F.R. 204.6(g)(l) states:

> The establishment of a new commercial enterprise may be use4d as the basis of a petition for classification as an alien entrepreneur by more than one investor, provided each petitioning investor has invested or is actively in the process of investing the required amount for the area in which the new commercial enterprise is principally doing business, and provided each individual investment results in the creation of at least ten full-time positions for qualifying employees. 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 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.

The Form I-526 lists Petition as ___% owner of the NCE. The Limited Partnership Agreement, in Exhibit 10, in the section titled "Contributions", lists ___ non-EB-5 investors in the Project.

Please provide detailed explanation and supporting evidence to show the source of any outside [non EB-5] funding that the Project required. If the capital invested originates from an individual (i.e. not a bank loan), the name of the investor accompanied by a copy of officially issued government identification for each outside investor should be submitted to comply with the requirements of 8 C.F.R 204.6(g)(l).

USCIS requests evidence of these outside founds being deposited into the NCE's bank account. If the loans are a personal loan secured by an individual's private equity, please provide government issued identification for the person(s) securing the loan as well as a loan contract showing the underlying security for the loan.

Please note that even if any outside investors are not applying for immigration benefits relating to their investment in the Project, they must still provide evidence of the lawful source of their invested capital as detailed in 8 C.F.R. 204.6(e), in order to support Petitioner's Form I-526 submission.

Petitioner has not demonstrated by a preponderance of the evidence that <u>all</u> the investment capital in the NCE derived from lawful means in compliance with 8 CFR 204.6(g)(l).

Please identify (e.g. for individuals – passport, driver's license etc.; for entities – business registration documents) each and every owner of the NCE and what percentage each entity has and had in the NCE.

U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20792326

Date: JUN. 16, 2022

Appeal of Immigrant Investor Program Office Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

The Petitioner seeks classification as an immigrant investor pursuant to the 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 (NCE) 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 did not establish eligibility for the EB-5 classification. Specifically, the Chief determined that the Petitioner did not establish she placed the required amount of capital at risk into [redacted] the NCE, as required by 8 C.F.R. § 204.6(j)(2) or show that the capital invested in the NCE derived from lawful sources as required by 8 C.F.R. § 204.6(g)(1). The Chief then affirmed her decision on a motion to reopen filed by the Petitioner. On appeal, the Petitioner maintains that she has shown eligibility for the EB-5 classification and submits new evidence.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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 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. An immigrant investor may invest the required funds directly in an NCE, as in this case, or through a regional center. To be eligible for the EB-5 classification, a petitioner must show that he or she "has invested or is actively in the process of investing the required amount of capital" and "placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk." 8 C.F.R. § 204.6(j)(2). The regulation defines "invest" to mean "to contribute capital," and specifies that capital includes "cash, equipment, inventory, other tangible property," and "cash equivalents" but states that a contribution of capital "in exchange for a note, bond, convertible debt, obligation, or any

other debt arrangement between the immigrant investor and the [NCE] does not constitute a contribution of capital for the purposes of this part." 8 C.F.R. § 204.6(e).

The USCIS Policy manual[1] provides additional guidance on debt arrangements involving "redemption language" stating:

> Any agreement between the immigrant investor and the new commercial enterprise that provides the investor with a contractual right to repayment is an impermissible debt arrangement. In such a case, the investment funds do not constitute a qualifying contribution of capital.
>
> FN 20. *See Matter of Izummi*, 22 I&N Dec. 169, 188 (Assoc. Comm. 1998). *Matter of Izummi* addressed redemption agreements in general, and not only those where the investor holds the right to repayment. USCIS generally disfavors redemption provisions that indicate a preconceived intent to exit the investment as soon as possible, and notes that one district court has drawn the line at whether the investor holds the right to repayment. *See Chang v. USCIS*, 289 F.Supp.3d 177 (D.D.C. Feb. 7, 2018).

In addition, a petitioner must show that his or her invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an immigrant investor even though there are several owners of the enterprise, including persons who are not seeking EB-5 classification provided that the source(s) of all capital invested is identified and all invested capital has been derived by lawful means. 8 C.F.R. § 204.6(g)(1).

II. ANALYSIS

In this case, the Petitioner alleged that she invested $500,000 into the NCE on July 19, 2016.[2] According to the business plan, the NCE intends to develop and operate a [redacted] California. On appeal, we withdraw the Chief's determination finding the Petitioner did not place her capital at risk but agree with the Chief's determination that the Petitioner did not identify the sources of all capital invested in the NCE or show that all the capital invested derived by lawful means.

A. Capital at Risk

The Chief's decision questioned whether the Petitioner had entered into an impermissible debt arrangement by signing an operating agreement that included redemption provisions that indicated a preconceived intent to exit the investment as soon as possible and gave the Petitioner the right to repayment. In her decision to deny the petition, the Chief indicated the operating agreement made the Petitioner "legally able to (and possibly expect to) withdraw [her investment] at any time with the consent of the Manager." The Chief determined that the Petitioner had entered into an impermissible debt arrangement with the NCE and therefore had not placed her capital at risk as required under 8

[1] 6 *USCIS Policy Manual* G.2(A)(2), *available at*: https://www.uscis.gov/policy-manual.

[2] The Petitioner indicates that the NCE is located in a targeted employment area, and that the requisite amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. See 8 C.F.R. § 204.6(f)(2).

C.F.R. § 204.6(j)(2). The Chief also determined that the Petitioner had not identified the sources of all capital invested in the NCE by other investors and had not shown the invested capital derived from lawful means as required by 8 C.F.R. § 204.6(g)(1).

On appeal, the Petitioner argues the provisions in Article 9 of the operating agreement do not contain the terms "redemption" or guarantee a buyer even if the NCE manager agrees to allow the sale. She also argues she had no intention to exercise any rights to transfer her shares in the NCE and did not attempt to sell her shares when the [redacted] appeared to be at risk of never being constructed.[3] The record includes an operating agreement that allows the Petitioner to sell her shares, with the consent of the NCE manager, to any third party after other members of the NCE have the right of first refusal. However, while the operating agreement allows the Petitioner to sell her shares at the price and terms she sets, there are no provisions in the operating agreement that indicate there is a guaranteed buyer. Here, since the record does not demonstrate the Petitioner had a preconceived intent to exit the investment as soon as possible with a right to repayment we will withdraw the Chief's determination that the Petitioner entered into an impermissible debt arrangement and therefore had not placed her capital at risk as required by 8 C.F.R. § 204.6(j)(2).

B. Lawful Source of Funds

The Petitioner's initial filing included records showing the NCE had a total of 12 other investors not seeking EB-5 classification. In response to the Chief's notice of intent to deny (NOID), the Petitioner provided an updated capital accounts and member registry showing the NCE had a total of 48 other investors including three investors seeking EB-5 classification with a total capital investment of $10,358,056. The Petitioner also provided a letter from the manager of the NCE stating all investors in the NCE had invested funds from lawful sources. In her motion to reopen filed with the Chief, the Petitioner provided another updated capital accounts and member registry document which indicated that as of January 2020, there were 50 other investors in the NCE including two seeking EB-5 classification. However, none of the documents in the record identify the sources of any of the funds invested in the NCE from other investors. Additionally, the letter from the manager of the NCE alleging all sources of funds invested in the NCE derived from lawful means is not sufficient to demonstrate, by a preponderance of the evidence, the lawful sources of the funds invested. The letter did not specifically identify the sources of the invested funds and is not supported by independent, objective evidence that would show the sources of invested funds derived from lawful sources. Here, we agree with the Chief's determination the Petitioner did not identify the sources of all capital invested in the NCE by other investors or show the invested capital derived from lawful means as required by 8 C.F.R. § 204.6(g)(1).

On appeal, the Petitioner argues a second EB-5 investor in the NCE received an approval and therefore her petition should be approved. However, we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

[3] The Petitioner also alleges in her appellate brief that her previous counsel did not notice the redemption provisions and mistakenly told the Petitioner all provisions complied with USCIS. However, to the extent the Petitioner alleges ineffective assistance of counsel she has not complied, either strictly or substantially, with the procedural requirements of *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

Additionally, the Petitioner argues the Chief improperly weighed the evidence using a heightened standard of proof and claims her list of the age and occupation of other investors shows "there is a greater than 50% change [sic] that their investment funds are from lawful means." It is the Petitioner's burden 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); *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Ho*, 19 I&N Dec. 582, 588-89 (BIA 1988); *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966); *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019). Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Chawathe*, 25 I&N at 375-76. Under the preponderance of the evidence standard, the evidence must demonstrate that the petitioner's claim is "probably true." *Id.* at 376. We will examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, she has satisfied the standard of proof. Stated another way, a petitioner must establish that there is greater than a fifty percent chance that a claim is true. We disagree with the Petitioner's contention that the Chief applied a heightened standard of proof. In this case, the Petitioner provided documents from the NCE listing the name of each investor as well as the amount of their capital contribution into the NCE. Later, the Petitioner provided the age and occupation of each investor. However, the Petitioner has not submitted evidence to establish that each investor's capital contribution derived from the income earned from their occupation. The Petitioner's unsupported conjecture regarding the source of the other investors' funds is not sufficient to establish the lawfulness of those funds under the preponderance of the evidence standard. . *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (simply going on the record without supporting documentation is not sufficient to meet the burden of proof in these proceedings).

Finally, the Petitioner argues she is unable to obtain evidence from other investors because she already invested her funds in the NCE and no longer had "bargain power to request for any financial files from other investors" and blames her former counsel for not informing her of this requirement.[4] The Petitioner's argument is not convincing, as at the time of filing her I-526, she was required to identify the sources of all capital invested in the NCE by other investors and show the invested capital derived from lawful means as required by 8 C.F.R. § 204.6(g)(1). As mentioned above, it is the Petitioner's burden to show, by a preponderance of the evidence, the lawful source of all funds invested in the NCE. Here, the Petitioner has failed to do so. As such, we find the Petitioner has not identified the sources of all capital invested in the NCE and has not shown the capital invested in the NCE derived from lawful sources. 8 C.F.R. § 204.6(g)(1).

III. CONCLUSION

We withdraw the Chief's finding that the Petitioner had not placed her capital at risk as required by 8 C.F.R. § 204.6(j)(2). Based on the reasons stated above, we conclude that the Petitioner has not

[4] As mentioned above, to the extent the Petitioner alleges ineffective assistance of counsel she has not complied, either strictly or substantially, with the procedural requirements of *Lozada*, 19 I&N at 637.

identified the sources of all capital invested in the NCE and has not shown the capital invested in the NCE derived from lawful sources. 8 C.F.R. § 204.6(g)(1).

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.