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Investor's visa boon to Pinoys

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The US Department of State has recently released important guidelines concerning immigrant visa "investor" applications. As previously noted in this column, an alien who has invested or is actively in the process of investing at least \$40,000 in an enterprise in the United States of which he will be a principal manager, may become a permanent resident under the non-preference category.

This category opens a new opportunity for Filipinos in light of the new system of visa allocation that takes effect on October 1, 1977. There will be a potential 1200 visa numbers available annually as a result of a "fall down" from the 7th preference, and the waiting list is not as long as in the other categories with chronic backlogs. The latest estimate of the Immigration Service shows a backlog of only 1,858 which means that the backlog may be cleared up in about one and a half years. (This computation disregards other factors).

A medical doctor may avail himself of this visa route and he does not have to pass the Visa Qualifying Examination. This is so because he is not applying as a medical doctor, but as a business investor.

The following questions and answer based on the State Department memo will guide the alien investors:

Is it necessary that the \$40,000 capital comes from the investor's savings?

Ans. No. The source of the money invested, whether by gift, loan, savings, or gambling,

has no separate significance in a substantive sense. What is required is that the alien "owns" the money in the sense that he actually possesses and has control over it. For example, he borrows \$20,000 from a bank and uses this and \$20,000 he already possesses to purchase a business. Assuming that the borrowed money is advanced directly to the alien for his disposition the total amount would be considered as meeting the requirement.

Of course, if the transfer of funds is just a sham transaction and the alien does not have actual possession of the money, the Immigration Service will disapprove the application. Thus it may be hard to prove that an alien with a history of low paying employment and no provable assets prior to his investment actually possesses the required amount. The same is true in the case of an alien whose country has currency restrictions that preclude export of funds for investment.

What is considered as a 140,000 investment? If the alien purchases a business for \$45,000 by putting down a cash payment of \$5,000 and obtaining a purchase money mortgage of \$40,000, will this satisfy the requirement?

Ans. The regulations require that there is a clear outlay of capital totalling \$40,000 in establishing the business or for the subsequent purchase of any fixed assets needed for the operation of the business. In the above example, the alien can not claim an "investment" of \$45,000, but only of \$5,000. Also, an individual's net worth or personal assets do not constitute an "investment." So that a car previously purchased cannot be considered as part of the business investment subsequently acquired.

When is an alien considered as "actively in the process of investing" for purposes of the investor's visa?

Ans. The alien must have made an actual commitment of some money, must have shown that the business has an actual existence and that the cost of acquiring or establishing the business will exceed \$40,000. An example of this would be a situation where the alien has purchased a business for \$50,000 which is deemed a reasonable market value, has signed a contract calling for an initial payment of \$20,000 with the balance to be paid in 90 days, and he presents financial capability of meeting his obligation.

A corporation which does not possess any property or assets is not a business enterprise for purposes of the regulations.

What is meant by "principal manager"?

Ans. He is somebody that has the requisite managerial duties and responsibilities. In determining the presence of such qualification, the basic consideration extends to an analysis of the direct effect on the enterprise by the aliens's exercise of his duties and responsibilities, the extent of his control over the business, the structure of the organization, the business character, etc.