



Immigration Law Tampa Bay

Steven A. Culbreath, Esq.

5027 Central Avenue, St. Petersburg, FL 33710

steve@ImmigrationLawTampaBay.com || www.ImmigrationLawTampaBay.com

SOURCE OF FUNDS

The U.S. State Department's FOREIGN AFFAIRS MANUAL ("FAM") governs Visa regulations and adjudications, including the E-Visas.

When specifically addressing concerns of "SOURCE OF FUNDS" (for the investment), the basic requirement / element is stated here, as follows:

9 FAM 402.9-6(B)(b) Source, Possession, and Control of Funds:
(CT:VISA-569; 04-06-2018)

"The source of the investment may include capital assets or funds from savings, gifts, inheritance, contest winnings, loans collateralized by the alien's own personal assets (see paragraph c below) or other legitimate sources. The source of the funds need not be outside the United States. The source of the investment must not, however, be the result of illicit activities. You may request whatever documentation is needed to properly assess the source of the funds. The alien must demonstrate possession and control of the invested capital assets and funds. NOTE: inheritance of a business itself does not constitute an investment."

As with most other elements of E-Visa requirements, the issue of documenting the "Source" (and control) of funds for the investment can be a bit 'tricky', but it doesn't have to be.

Simply stated, the U.S. government wants to ensure that the investor has dominion and control, and lawful possession over funds gained by lawful means.

What can be "lawful origination/source funds"??? -- (1) inheritance (2) gift (3) loan (4) sale of assets (5) income (6) legal winnings (lottery, lawful gambling,

game shows, etc.) --- follow the money, from its arrival in the U.S. for the E-Visa enterprise, backwards, documenting EVERY STEP, including how the Investor obtained those funds.

PRACTICE TIP: In my E-Visa applications, I often encounter the "Cash from Uncle" type of scenario, where the would-be investor claims a large cash sum but cannot easily document its source. In these situations, they often were stockpiling cash under the nose of their local government, revenue service or other taxing agency. Discussions about this often need to be delicate, or diplomatic. Depending on the client's cultural background, local customs, sophistication and business-sense, they may not even understand the "problem" with undeclared or untraceable cash.

In my experience, while you may not want to counsel the client about retroactively filing any kind of tax returns or declaring funds in their home country (or wherever those funds originated), you do have to stress that for purposes of the U.S. petition or application (seeking E-1/E-2), we need to do a reasonably good job convincing the U.S. government that the funds coming in are not "dirty money" obtained by less-than-lawful means.

It's helpful to look for the easiest, straightforward solution first, when it comes to documenting the money. ("what the easiest way to show where this \$\$ came from?")

If it's earned from client's employment and constitutes savings, then show it as having come from a savings account in client's name showing period, regular deposits. If the client works in an industry or field where cash is common, explain that, and if possible, with some independent evidence to back it. ---

SIDE NOTE: the amount of savings should be explainable, given the amount of time over which the savings occurred, the client's age, the client's rate of earning income, etc. (\$2 million cash savings from a mid-20's "restaurant server" is not believable or realistic)

- If the client's money is from a business he/she owns and controls, that should be an easy one to document, as coming from business funds. This also goes for regular income of royalty payments, book sales, speaking fees, etc. these are generally not hard to document.

- If the client received private funds from a spouse, relative, close friend, etc. a simple letter (e.g. a gift letter, or early inheritance payout letter, etc.) will do the trick.
- If the client is a beneficiary of a trust and receives trust fund income, those are easy to document, and obtain a letter from the attorney or trustee or institution overseeing the disbursement of trust funds.
- If the client received a large, one-time payout from a singular event, those are usually easily documented as well. (legal settlement, lottery winnings, game-show winnings, other cash prizes, etc.)
- If the client received a LOAN for the investment funds, BE CAREFUL!!! --- The Foreign Affairs Manual (FAM) expressly PROHIBITS loans secured by the U.S. business enterprise!! The U.S. E-Visa enterprise/business CANNOT be the security or collateral for the loan!!! --- That's a major No-No!
- Loans MUST either be "UNSECURED" (no security/collateral), other than the promise to repay the loan, OR "SECURED BY ASSETS OTHER THAN the U.S. Business". – It is OK for the investor to borrow against other outside assets he/she owns elsewhere.

In any given loan (or gift) situation, be sure to document it well with corresponding documents. Be SURE to show that the U.S. business (or its assets) are NOT collateralized!

PRACTICE TIP: Watch out for "Gifts" or "Loans" from people with whom the investor otherwise has no normal dealings, or affinities to. ("why would this stranger give/loan this investor the \$\$ to operate a U.S. business?") -- while this is NOT "illegal" in any way, a careful government adjudicator might pick up on this and question this arrangement and the funds.

Generally, documenting that the investment funds ultimately came from a clean, lawful source into the lawful possession and control of the Investor, is not too difficult, but does involve good documentation by the Investor.

The "proverbial elephant in the room" is CASH for which the client has no good or obvious explanation as to how he got, or you already KNOW from his explanation that something about that cash is "fishy".