

## Revisiting Indebtedness: EB-5 Team Receives Dozens of I-526 Approvals for Loan Cases

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As we [previously reported](#), **USCIS** has recently changed its policy of allowing loans to be a source of an investor's lawful capital. Many stakeholders have reported that **I-526 Petitions** are being denied when the investor does not wholly own the real property used to collateralize the loan. USCIS has stated that proceeds from a loan may qualify as capital of the investor provided that: (1) the investor is personally and primarily liable for the loan and (2) the value of the collateralized asset actually owned by the investor meets or exceeds the value of the loan.

Despite many legal arguments to the contrary, the AAO [claims](#) *Matter of Soffici* holds that all cash proceeds derived from a loan must be evaluated as indebtedness. This is an extraordinary leap from the facts of the precedent decision, since the cash proceeds of the loan claimed by the petitioner were actually the proceeds of a loan obtained by the NCE, not by the investor. Stakeholders have voiced a number of concerns about this flawed legal reasoning and recently it has been reported that there is now pending litigation to decide this issue in the federal courts.

Taking a new legal route, we have been successful in making legal and factual arguments about property law in China. There are various factual scenarios and property law concepts in China applicable to these indebtedness cases, including the value of the property, the type of property ownership under Chinese law, divisible property law concepts, mortgage laws in China, and debt/credit/contribution principles. Thus, even if USCIS continues to adjudicate cases under its new policy guidance, mortgage cases still can be approved if they are structured correctly and USCIS is issuing approvals once again. This is very welcome news for many EB-5 applicants that had filed their applications and were concerned about the viability of their petitions given this retroactive change in policy.

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