U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5591888

Date: APR. 6, 2020

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, finding that the Petitioner did not demonstrate the lawful source of the funds his son remitted on the Petitioner's behalf to [redacted], the NCE. *See* 8 C.F.R. § 204.6(e) (2011) (defining "capital"), (j)(3). The Petitioner appeals, maintaining that he has established eligibility for the EB-5 classification.

In these proceedings, it is the Petitioner's burden to establish, by a preponderance of the evidence, eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).[1] 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 or through a regional center, as it is the case here.

In addition, to establish eligibility for the EB-5 classification, 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) (defining "capital"). To show the lawful source of the funds, an investor must submit evidence such

[1] 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, it has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

as foreign business and tax records or documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(j)(3). Bank letters or statements corroborating the deposit of funds by themselves are insufficient to show their lawful source. *Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The record must trace the path of the funds back to a lawful source.[2] *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

In this case, the Petitioner claims to have invested at least $500,000[3] in the NCE. In his appellate brief, he states that he "utilized a third party to assist him to exchange Vietnamese Dong to U.S. dollars and then remitted [the funds]" to the NCE. The record includes a wire transfer services document showing that on September 28, 2016, [redacted] the Petitioner's son, remitted $550,000 to the NCE on the Petitioner and his spouse's behalf. While the Petitioner has demonstrated that he received Vietnamese Dong (VND) for selling his property in Vietnam in 2016, the record is insufficient to confirm the lawful source of the U.S. dollars (USD) his son transferred to the NCE.

Initially, the Petitioner alleged that he had relied on [redacted] to convert his Vietnamese currency into U.S. dollars and to bring the funds out of Vietnam to the United States. In his response to the Chief's request for evidence (RFE), he revealed that he had in fact relied on multiple businesses and individuals to move the currency. The bank documents show that on September 26, 2016, he withdrew 12,298,320,000 VND in cash from his [redacted] ACB account, and [redacted] remitted $551,000 to the Petitioner, his spouse and son's U.S. [redacted] account. The record also includes non-bank documents, including (1) a receipt from [redacted] Corporation and a letter from its vice general director, [redacted] acknowledging the receipt of the Petitioner's 12,298,320,000 VND; (2) a letter from an employee of [redacted] Company, [redacted] stating he received VND from [redacted] and transferred them to [redacted] Trading and Import-Export Company Limited; (3) a letter from a representative of [redacted] Company," [redacted] and a receipt, noting that the company received 12,298,320,000 VND from [redacted] "on behalf of [the Petitioner]"; and (4) registration documents of [redacted] Corporation, [redacted] Company, and [redacted] Trading and Import-Export Company Limited.

While the record contains documents concerning funds the Petitioner's son remitted to the NCE, it does not establish, by a preponderance of the evidence, the complete path of the funds or their lawful sources. *See Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. According to the Petitioner, his VND in cash went through individuals and companies and ultimately to Ms. [redacted] who accepted the money on [redacted] Trading and Import-Export Company Limited's behalf. Although the

[2] These requirements "serve a valid government interest; i.e., to confirm that the funds utilized in the [EB-5] program are not of suspect origin." *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001) (holding that a petitioner had not established the lawful source of her funds because, in part, she did not designate the nature of all of her employment or submit five years of tax returns), *aff'd*, 345 F.3d 683 (9th Cir. 2003). According to a March 2003 U.S. Department of Treasury Financial Crimes Enforcement Network (FinCEN) Advisory, which the Petitioner offers on appeal, "law enforcement investigations have shown direct links between criminal elements and the use of IVTS [informal value transfer system] mechanisms for the purpose of moving and laundering illicit proceeds."

[3] The Petitioner indicates that the NCE is located in a targeted employment area and claims 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) (2011).

Petitioner has presented documentation indicating that the company[4] was engaged in several business types, including "wholesale trade," "tour operator activities," and "travel agency activities," he has not demonstrated that it could legally engage in currency exchange and transmission. The evidence does not list currency exchange or services as one of its business types.

On appeal, the Petitioner submits a January 2019 letter from an attorney in Vietnam, claiming that under Vietnamese law, "[e]xport and import businesses will be allowed to open foreign currency accounts, buy foreign currencies such as USD to transfer money from Vietnam to abroad at Vietnamese banks." Neither this letter nor other documentation in the record demonstrates that [redacted] Trading and Import-Export Company Limited could act as a currency exchanger and transmitter by taking VND from an individual in Vietnam, then transferring to him USD in the United States. The Petitioner has not provided copies of the ordinances and decrees referenced in the attorney's letter. Furthermore, the attorney's letter cites to an ordinance that permits businesses to purchase foreign currency specifically to "make payments for imports of goods and services" but makes no reference to the ability of such a company to act as a currency exchanger. When relying on foreign law to establish eligibility, the application of the foreign law is a question of fact, which must be proved by the petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973)). Here, the record does not establish that [redacted] Trading and Import-Export Company Limited could lawfully exchange the Petitioner's funds, then transmit the funds by taking VND from him in Vietnam, then transferring to him USD in the United States.

Moreover, the Petitioner has not shown that [redacted] Trading and Import-Export Company Limited had lawfully acquired the $551,000 it purportedly remitted to the Petitioner and his family members' U.S. account. While the record contains some business documents, including business registration, it does not include information on the size of the company's operation or confirm that it had lawfully accumulated sufficient amount in U.S. dollars to send to the Petitioner in September 2016.

Furthermore, as the Chief pointed out in her decision, the bank record shows that [redacted] remitted $551,000 from an account ending in 00138 to the Petitioner and his family members' U.S. account, but the record does not demonstrate that [redacted] Trading and Import-Export Company Limited owned the account at the time of the transaction. Its business documents, while list other accounts, do not list one ending in 00138. Ms. [redacted]s claim in her December 2018 letter that the company owned the account that remitted funds to the Petitioner and his family members' U.S. account is not corroborated by the record, and thus, is insufficient to demonstrate the lawful source of the U.S. dollars from the account which the Petitioner later received. In short, the Petitioner has not shown that the funds he invested into the NCE derived from the sale of his property, as alleged. The Petitioner must establish the lawful source of the entire amount he claims to have invested in the NCE with documents that trace the complete path of the funds back to a lawful source. *See Ho*, 22 I&N Dec. at 210 11; *Izummi*, 22 I&N Dec. at 195. Here, he has not made such a showing.

[4] According to documents entitled "Business Registration Report within the Past 3 Years" and "Current Information of Enterprise," [redacted] Trading and Import-Export Company Limited dissolved in [redacted] 2017.

III. CONCLUSION

Based on the reasons we have stated above, we conclude that the Petitioner has not shown, by a preponderance of the evidence, the lawful source of the funds his son remitted to the NCE on the Petitioner and his spouse's behalf. The Petitioner has therefore not established eligibility for the EB-5 classification.

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; *Skirball Cultural Ctr.*, 25 I&N Dec. at 806. Here, that burden has not been met.

ORDER: The appeal is dismissed.