U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 06803535

Date: APR. 15, 2021

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 document the lawful source of the funds he remitted to [redacted] the NCE, which is affiliated with [redacted] (the Regional Center), a United States Citizenship and Immigration Services (USCIS) designated regional center.[1] On appeal, the Petitioner submits additional evidence and asserts that the record establishes his eligibility for the benefit sought.

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 or through a regional center. Regional centers apply for designation as such with USCIS. Designated regional centers identify and work with NCEs, which in turn are associated with a specific investment project taken on either directly by the NCE, or by one or more separate entities known as the "job creating entity" (JCE). Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii).

[1] A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e).

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). To show the lawful source of the funds, an investor must submit evidence such 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 demonstrate 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] *Id.*

II. ANALYSIS

The Petitioner indicates he invested $500,000[3] in the NCE on August 21, 2017. The most recent business plan claims the NCE seeks to raise up to $49,500,000 in EB-5 funds from 99 immigrant investors to loan to [redacted] the job creating entity (JCE). The JCE plans to use the EB-5 capital and other funds to construct a [redacted] recycling and [redacted] facility, and is located in [redacted] AR.

The Chief issued a request for evidence (RFE), notifying the Petitioner that he did not submit sufficient evidence documenting the path or lawful source of his EB-5 capital. Among other things, the Chief raised concerns regarding a lack of documentation showing the path or lawful source of the $500,000 invested in the NCE as well as the lawfulness of the currency swap or exchange conducted by [redacted][4] After reviewing the record, the Chief denied the petition, finding that the Petitioner did not provide sufficient documentation showing the path of his investment funds into the NCE and did not sufficiently document the lawful source of the USD funds invested in the NCE by third parties on the Petitioner's behalf. The Chief also found the Petitioner did not sufficiently demonstrate the lawfulness of the currency swap or exchange conducted in this case. On appeal, the Petitioner contends that he has shown his eligibility for the classification and offers additional documentation.

A. Path and Source of the Petitioner's EB-5 Capital

In this case, the Petitioner alleges that his EB-5 capital derived from a 4,000,000 renminbi (RMB) gift from his parents.[5] The record indicates the gift funds were deposited in the Petitioner's [redacted] Bank account on August 14, 2017. The Petitioner claims China does not allow the open trade of its RMB currency and restricts foreign currency exchanges to $50,000 per person, per year. The record at the time of the Chief's decision indicates the Petitioner enlisted the help of an investment consultant, [redacted] to assist with the currency exchange whereby the Petitioner would transfer his gift funds to [redacted]'s [redacted] Bank account on August 15, 2017, and, in

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[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).

[3] 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).

[4] [redacted] is incorporated in Canada and was registered as a money services business (MSB) licensed to conduct foreign exchange and money transfers in [redacted] Canada.

[5] The Petitioner alleges the gift funds derived from a mortgage loan secured by his parents' real property.

return, [redacted] would purchase $550,000 on August 16, 2017, and remit the funds to the NCE on the Petitioner's behalf. [redacted] claimed to have worked with [redacted] to secure $550,00 from [redacted][6] who then remitted the USD funds to [redacted]'s personal [redacted] Bank account. [redacted] then transferred the $550,000 to the NCE on the Petitioner's behalf as his investment fund.

On appeal, the Petitioner submits additional evidence business and financial records for [redacted] background information for [redacted] and bank records purporting to show the path of the Petitioner's investment funds into the NCE. The Petitioner, however, had already been put on notice of the required evidence, was given a reasonable opportunity to provide the evidence through the Chief's RFE, and the evidence was reasonably available to the affected party at the time it was supposed to have been submitted.[7] On appeal, the Petitioner claims that USCIS did not notify him of any derogatory information and did not allow a period of time for rebuttal. However, the Chief's RFE specifically requested the Petitioner provide bank statements and other documents, from all individuals and involved entities, demonstrating the path and lawful source of the Petitioner's investment funds. The Chief's RFE also requested the Petitioner provide evidence of [redacted]'s relationship to the Petitioner and [redacted] as well as evidence [redacted] registered as a MSB and was the account owner of the [redacted] Bank account from which the Petitioner's investment funds were remitted to the NCE. The record shows the Petitioner responded to this derogatory information by providing an attorney letter detailing [redacted]'s legal issues with the U.S. Securities and Exchange Commission. The Petitioner has not demonstrated that the evidence submitted on appeal was not reasonably available at the time of the RFE which provided the Petitioner ninety-eight days to respond. We will therefore review the record without considering the additional evidence submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose").

The Petitioner has not submitted sufficient documentation to show the path and lawful source of the $550,000 remitted to the NCE on the Petitioner's behalf. The record at the time of decision includes a letter from [redacted], dated August 25, 2017, which stated the company worked with [redacted] to exchange RMB funds into USD. The letter indicated [redacted] sent 3,799,400 RMB of the Petitioner's gift funds to [redacted]'s [redacted] Bank account on August 16, 2017, which the company alleged was "one of the RMB accounts used by [redacted] to receive RMB in Mainland China." [redacted] then claimed to have arranged for $550,000 be remitted "across several transactions" to [redacted]'s personal [redacted] Bank account. [redacted] then remitted the USD funds to the NCE on behalf of the Petitioner. In response to the Chief's RFE, the Petitioner submitted an additional verification letter from [redacted] which claimed they are unable to purchase RMB as a wholesaler from international based banking institutions and, therefore, has to conduct currency swaps by leveraging deals with a network of customers. [redacted]

[6] The record indicates [redacted] is incorporated in Hong Kong and registered to conduct the wholesale and retail sale of brand name shoes, garments, and accessories.

[7] *See Oyeniran v. Holder*, 672 F.3d 800, 808–09 (9th Cir. 2012) ("It is not sufficient that the evidence physically existed in the world at large; rather, the evidence must have been reasonably available to the petitioner."). *See also INS v. Doherty*, 502 U.S. 314, 324 (1992) (the Attorney General did not abuse his discretion by denying motion to reopen to apply for asylum and withholding based on lack of new material evidence).

[redacted] had a customer, [redacted],[8] that was in need of RMB funds to pay its vendors in mainland China. According to a letter from [redacted], it designated [redacted]'s bank account as its own RMB account and agreed, once in receipt of the RMB funds, to remit $550,000 from its company account to [redacted]'s [redacted] Bank account.

First, the Petitioner has not submitted sufficient documentation of the complete path of his investment funds that were submitted to the NCE. While the Petitioner alleges his RMB funds were remitted to the receiving agent for [redacted] as part of a currency swap, the record does not support this assertion. [redacted]'s [redacted] Bank account statement shows only her name and does not indicate she is the business agent of [redacted] or [redacted]. Additionally, [redacted]'s bank statement does not show the RMB funds being remitted to [redacted] business accounts or otherwise being used in a currency exchange. Additionally, the Petitioner did not provide [redacted]'s [redacted] bank statements to show when the company obtained the $550,000 or where the USD funds were sourced prior to remitting these funds to [redacted]. The record must trace the path of the funds back to a lawful source. *See Ho*, 22 I&N at 210-11; *Izummi*, 22 I&N at 195. Here, the Petitioner has not documented the path of her RMB funds back to any [redacted] bank accounts and has not traced [redacted]'s $550,000 back to a lawful source.

Next, the Petitioner has not submitted sufficient documentation showing the $550,000 funds [redacted] remitted to the NCE did not derive from unlawful means. The record at the time of the Chief's decision indicated [redacted] had USD funds but needed RMB funds to pay its vendors in mainland China. The Petitioner submitted a wire transaction form showing [redacted] remitted $550,000 to [redacted]'s [redacted] Bank account as well as [redacted]'s [redacted] Bank statement showing the receipt of $550,000 from [redacted]'s [redacted] bank account. However, these bank records, by themselves, are not sufficient to show the lawful source of [redacted]'s USD funds. Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *Id.* For the reasons stated above, the Petitioner has failed to demonstrate the path or lawful source of his investment funds remitted to the NCE on his behalf.

On appeal, the Petitioner argues USCIS made a mistake of law because it applied an incorrect, heightened standard of proof when requesting additional documents from [redacted] and its clients because [redacted] is a licensed MSB. In support, the Petitioner indicates [redacted] is actively registered with Canadian authorities and has documented policies and procedures to report suspect transactions to the proper authorities. The Petitioner also submits three articles explaining the currency exchange restrictions imposed on mainland China as well as the difficulty wealthy Chinese citizens have exchanging RMB funds into foreign currency to pursue overseas investment options. We disagree with the contention that a heightened standard of proof was imposed on the Petitioner by requesting additional documentation from a licensed MSB. As mentioned above, the record at the time of the Chief's decision did not demonstrate the path or lawful source of the funds used in the alleged currency swap initiated by [redacted]. A petitioner must show that his or her invested capital did not derive, directly or indirectly, from unlawful means and must submit evidence such as foreign business and tax records or documentation identifying

[8] [redacted] is a Hong Kong based company registered to conduct the wholesale and retail sale of brand name shoes, garments, and accessories.

sources of the capital. *See* 8 C.F.R. § 204.6(e) and 8 C.F.R. § 204.6(j)(3). While [redacted] may be a registered MSB in Canada that attempts to find ways to circumvent the currency exchange restrictions imposed by the Chinese government, this does not relieve the Petitioner of his burden to show the path and lawful source of all funds related to his investment in the NCE. Here, for the reasons discussed, the Petitioner has not made such a showing.

Additionally, we disagree with the contention that [redacted] need not provide documentation of its transactions as a registered MSB in Canada which the Petitioner compares to "asking an individual to present evidence proving how a credit card company obtained money to pay in advance for their customers." Beyond the lack of documentation of the path and source of the funds used in the currency swap in this case, there is an unresolved inconsistency in the record regarding [redacted]'s role in the currency swap. When the record includes inconsistent evidence, "it is incumbent upon the [P]etitioner to resolve the inconsistencies by independent objective evidence" and that "[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *See Ho*, 19 I&N Dec. at 582. As mentioned above, [redacted] submitted a letter in the Petitioner's initial filing indicating [redacted]'s [redacted] Bank account was designated as [redacted]' RMB receiving account. However, a letter submitted by [redacted] claims [redacted]'s bank account was used as its RMB receiving account. The Petitioner has not submitted any documentation showing the business relationships between [redacted], [redacted] or [redacted] that would resolve this inconsistency. We have reviewed all the documents in the record and conclude they do not reconcile the inconsistencies in the record. In this case, the inconsistencies and lack of documentation do not support the Petitioner's contention that [redacted], as a registered MSB, need not show the path or source of funds used in an overseas currency swap involving the transfer of funds from third parties.

B. Other Issues

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether the purpose of the mortgage loan obtained by the Petitioner's parents allowed the funds to be used for EB-5 investments or whether the Petitioner showed he was the actual owner of his investment capital. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not documented the lawful source of his EB-5 capital. *See* 8 C.F.R. § 204.6(e), (j)(3); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

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.