U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35249703

Date: APR. 25, 2025

Appeal of Immigrant Investor Program Office Decision

Form I-526E, Immigrant Petition by Regional Center Investor

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).[1] This fifth preference (EB-5) classification makes immigrant visas available to aliens 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. An alien may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

The Chief of the Immigrant Investor Program Office (the Chief) denied the petition, concluding that the record did not establish that the Petitioner's investment funds were obtained through lawful means. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will sustain the appeal.

I. LAW

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE, either directly in an NCE or through a regional center, as the Petitioner has done in this case. 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) (2018).

An investor must demonstrate that they have placed their own capital at risk in the NCE. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 (RIA) was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in INA 203(b)(5), and adding significant new integrity provisions. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner filed their petition prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

(Assoc. Comm'r 1998) (stating that "[a] petitioner must . . . establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are [their] own"). In addition, they must show that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show that the invested funds were obtained through lawful means, a petitioner must produce evidentiary documents listed at 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 and the record must trace the complete path of the funds back to a lawful source.[2] *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (holding that demonstrating a "complete path" of funds is USCIS' authoritative position recognized by other relevant precedent decisions); *see also 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).

II. ANALYSIS

The Petitioner asserts that she invested $500,000[3] into [redacted] (the new commercial enterprise, or NCE), which is associated with [redacted]. The NCE proposes to pool $39,500,000 from 79 immigrant investors, which it will loan to [redacted] the job-creating entity (JCE). The JCE will use these funds to construct an 11-story office building in [redacted] Pennsylvania.

The record shows that the Petitioner's father, P-Z-, donated a total of $555,266 to her for use as investment funds for her immigrant investor petition. These funds derived from compensation received by P-Z- for the forced demolition of his business properties in China, as well as rental income from other properties. To document the transfer of these funds to the NCE, the Petitioner submitted statements from P-Z- and [redacted], a company licensed in [redacted] indicating that the company had agreed to exchange Chinese yuan (RMB) to U.S. dollars. The statements and remittance documents for a bank account belonging to P-Z- show that he transferred almost RMB 3.9 million, in three installments from May 15 to May 22, 2019, to the [redacted] account ending in [redacted] belonging to [redacted] names [redacted] in their statement as a "designated payee of the company in mainland China." The Petitioner also submitted her own [redacted] account statements showing her receipt of more than $555,000 in four installments from May 15 to May 23, 2019. These bank statements indicate that W-K-C- and [redacted] are the senders of these transfers, whom [redacted] identified in a second statement in response to the Chief's request for evidence (RFE) as its customers.

In her decision, the Chief concluded that while this evidence shows the U.S. dollar funds being deposited into the Petitioner's bank account, and from there to the NCE's account, the record does not sufficiently document the path of those funds and, thus, does not demonstrate that the funds derive from a lawful source.

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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 in a targeted employment area, and that the required amount of qualifying capital is thus adjusted from $1,000,000 to $500,000. 8 C.F.R. 204.6(f)(2).

On appeal, the Petitioner resubmits [redacted] statement and policy document regarding its efforts to combat money laundering and the funding of terrorism and adds a new document from the [redacted] government regarding the banking industry's handling of customer's personal data. She also submits a brief in which she makes a number of assertions which do not directly address the ground of denial in the Chief's decision. For instance, she suggests that the Chief erred by not explaining the difference between the currency exchange and transfer in her case versus those in immigrant investor petitions which were approved. But USCIS must decide each case on its own facts with regard to the sufficiency of the evidence presented. *Matter of Frentescu*, 18 I&N Dec. 244, 246 (BIA 1982); *Matter of Serna*, 16 I&N Dec. 643, 645 (BIA 1978). And as we stated at the outset, it is the Petitioner that bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. So we determine no such error in the Chief's decision.

The Petitioner also asserts that the facts in her case are different than those in the two precedent decisions upon which the Chief relied in her decision. Specifically, she states that unlike in those cases, she "just cannot trace her RMB funds to the USD funds provided by two customers of [redacted] While *Matter of Ho,* 22 I&N Dec. at 213, and *Matter of Izummi,* 22 I&N Dec. at 195, did not involve the exact scenario presented in this case, both serve as precedent decisions for the proposition that to establish that their investment funds did not derive from unlawful means, a petitioner must trace the path of those funds. *See also Borushevskyi v. USCIS*, 664 F. Supp. 3d at 129; *Truong v. USCIS*, No. 21-316 (RC), 2023 WL 4234658 AT *5 (D.D.C. June 28, 2023).

Further, the Petitioner's statement does not accurately depict the nature and extent of the deficiencies in the record. Not only does the record not show that [redacted] actually received the RMB installments from P-Z-, but there is no documentation of [redacted] claimed agency relationship with [redacted] beyond its written statements, or evidence that [redacted] is licensed to do business in mainland China. Similarly, as noted by the Chief, there is no documentation of the identity of W-K-C- and [redacted] or their relationship with [redacted] other than those statements, or any evidence of the source of the U.S. dollars that they transferred to the Petitioner's account. The record also lacks documentation of any agreement or other legal obligation under which they transferred those funds. Because there are multiple issues in the documentation of the source of the funds deposited by the Petitioner into the NCE's account, she has not shown that they derived from lawful means.

In addition, the Petitioner asserts on appeal that since [redacted] is licensed in [redacted] to operate as a money service, its currency exchange transactions should be treated the same as those handled by a traditional bank. However, [redacted] states that it departed from its normal procedures in handling the Petitioner's funds, routing them through third parties instead of sending them directly to the Petitioner's account. According to page 17 of the company's own "AML/CFT Policy" document, this is considered an example of a suspicious transaction which should be reported to its compliance officer. As the Petitioner has not shown that this transaction (with all of the deficiencies and gaps in evidence noted above and in the Chief's decision) complies with banking laws, regulations, norms, and procedures, or even [redacted] own internal policy, we will not consider it to have the same legitimacy as if it had been conducted by a bank.

For all the reasons discussed above, we conclude that the Petitioner has not established that the funds she claims to have invested derived from lawful means.

ORDER: The appeal is dismissed.