U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 09822226

Date: APR. 28, 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, finding that the Petitioner did not demonstrate the lawful source of the funds she remitted to [redacted] the NCE. An April 2017 business plan indicates that the NCE plans to "develop and operate a . . . [redacted] supermarket" in [redacted] California. *See* 8 C.F.R. § 204.6(e) (2016) (defining "capital"), (j)(3). In addition, the Chief concluded that the Petitioner did not show that she would engage in the direct management or policy making activities at the NCE. *See* 8 C.F.R. § 204.6(j)(5). The Petitioner appeals, maintaining that she has established eligibility for the EB-5 classification.[1]

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).[2] 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.

[1] [redacted]'s website does not confirm that the NCE, which operated in [redacted], California, remains in operation. *See* http:/[redacted], accessed on April 21, 2021, and a copy of the relevant online printout has been incorporated into the record of proceedings. While we will not rely on this information in this decision, the Petitioner must resolve this issue in future filings.

[2] 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.

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).

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.[3] *Id.*

II. ANALYSIS

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

The Petitioner claims she invested $500,000[4] in the NCE. In this case, the Petitioner alleges that her EB-5 capital derived from a 3,900,000 renminbi (RMB) mortgage loan secured by two properties owned jointly by the Petitioner and several of her family members. She claims her father-in-law purchased the first property in 2005 using his retained earnings and retirement pension proceeds while the second property was purchased in 2008 for 61,179.78 renminbi (RMB) using the Petitioner's retained earnings. The record indicates the mortgage loan proceeds were deposited in the Petitioner's [redacted] bank account ending in x8621 on June 12, 2017. According to a "Declaration for Gift," the co-owners of the mortgaged properties agreed to provide their portions of the proceeds to the Petitioner as a gift.

In this case, the Petitioner has not sufficiently documented the lawful source of funds used to purchase the second property in 2008. She alleges the purchase funds consisted of her retained earnings from August 1989 to January 2008. In support, she provided her personal declaration, dated June 5, 2017, whereby she claimed to have worked for [redacted] University as a documenter from August 1989 to September 2007 earning a total salary of 766,000 RMB during this period. Aside from her declaration, the Petitioner only provided a [redacted] "Qualification Certificate of Intermediate Level of Speciality and Technology" book which indicates the Petitioner earned her qualification as a Documenter on December 1997. This document, however, does not corroborate the Petitioner's assertions of her employment or earnings from August 1989 to September 2007. 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). Here, the Petitioner has not provided sufficient documentary evidence showing the lawful

[3] 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).

[4] 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).

source of her income from 1989 to 2007. While, the Petitioner provided an employment certification from [redacted] which indicated she began working there in October 2007 earning an annual salary of 100,000 RMB, this salary would have been insufficient to cover the 61,179.78 RMB purchase price of the second property in January 2008.

Additionally, the Petitioner has not sufficiently documented the path or lawful source of her retained earnings used to purchase the second property in 2008. In response to the Chief's notice of intent to deny (NOID) the petition, the Petitioner submitted a bank statement showing various wage deposits from January 1, 2007 to December 7, 2007, ending with an account balance of 76,679.18 RMB. However, the bank statement does not show the transaction used to make the second property purchase in 2008 and therefore does not sufficiently show the path of funds used to purchase the second property. Additionally, the bank statement does not disclose the name of the bank used by the Petitioner to retain her wages and therefore provides limited probative value in showing this account was used to purchase the second property. As such, the Petitioner has not established, through documentation, that the Petitioner lawfully acquired or accumulated sufficient funds to purchase the second property.

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 her management of the NCE or whether she received adequate notice of other lawful source of funds issues listed in the Chief's decision. *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 her 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.