U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 09742246

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, concluding the record did not establish, as required, that [redacted] the NCE, would create the necessary number of jobs and the Petitioner did not document the lawful source of the funds he remitted to the NCE.[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,[2] as the Petitioner has done in this case. Regional centers apply for designation as such with the United States Citizenship and Immigration Services (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, as it is the case here, or by one or more separate entities known as the "job creating entity."

[1] The Petitioner does not allege, and the record does not demonstrate, that the NCE has already created the requisite number of jobs. *See* 8 C.F.R. § 204.6(j)(4)(i)(A).

[2] 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).

Furthermore, 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

The Petitioner indicates he invested $500,000[4] in the NCE, which is associated with a USCIS-designated regional center, [redacted] The most recent business plan claims the NCE seeks to raise up to $35,000,000 in EB-5 funds from 70 immigrant investors to loan to [redacted], the job creating entity (JCE). The JCE plans to use the EB-5 capital and other funds to renovate an existing [redacted] resort into a [redacted] resort and is located in [redacted]

The Chief issued a request for evidence (RFE) and a notice of intent to deny (NOID) the petition, notifying the Petitioner that he did not submit sufficient evidence documenting the path or lawful source of his EB-5 capital and the evidence relating to the NCE's projected employment creation did not establish that the NCE would likely create the requisite number of jobs for qualifying employees within two years. *See* 8 C.F.R. § 204.6(j)(4)(i)(B). Among other things, the Chief raised concerns regarding apparent discrepancies regarding the Petitioner's submitted bank statements, employment and salary history, and alleged dividend payments. After reviewing the record, the Chief denied the petition, finding that the business plan and economic reports did not demonstrate that the NCE would likely create the requisite number of jobs within two years. *See id.* The Chief also found the Petitioner did not resolve the discrepancies in the record and therefore did not demonstrate his EB-5 capital did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e). 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 49,818,772 rubles (RUB) in income and dividends paid by the Petitioner's company, [redacted] The Petitioner provided a letter from the director general of [redacted] indicating the Petitioner received 19,000,772 RUB in salary from 2013 to 2015 and received two additional dividend disbursements of 18,068,000 RUB in 2014 and 12,750,000 RUB in 2015. The Petitioner alleges his employment and dividend distributions were deposited into his [redacted] Bank account before being transferred to his [redacted]

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[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).

[redacted] Bank account. The record indicates the Petitioner wired his $545,000 investment fund from his [redacted] Bank account to the NCE on January 15, 2016.

The record contains inconsistencies of the path and source of the Petitioner's income and dividend distributions. 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. According to the Petitioner's response to the Chief's RFE, "all employment and dividend proceeds were deposited into [the Petitioner's] [redacted] Bank account ending in 0403 [and] [p]rior to making the investment into the NCE, [the Petitioner] moved the money to his [redacted] Bank account, in two transfers, the transfers are duly reflected on the [redacted] Bank] statement..." However, this statement is discrepant with the documents submitted in the record. While the letter from [redacted] indicates the Petitioner received a dividend disbursement of 18,068,000 RUB in 2014 and 12,750,000 in 2015, the [redacted] Bank statement only shows a single dividend deposit of 30,818,000 RUB on December 18, 2015. Moreover, the Petitioner claimed to have earned a total income of 4,675,011 RUB in 2014 but his [redacted] Bank statement only shows a wage deposit of 3,071,960 in 2014 while the wage deposits in 2013 and 2015 match the reported income in the [redacted] letter.

There are also discrepancies in the Petitioner's reported transfers between his [redacted] Bank and [redacted] Bank accounts. The Petitioner's [redacted] Bank statement indicates the Petitioner made two wire transfers to his [redacted] Bank account: 22,827,960 RUB on December 22, 2015 and 25,179,000 RUB on January 14, 2016. However, the [redacted] Bank statement shows three deposits of 18,329,160 RUB, 2,223,555.97 RUB, and 4,276,444.03 RUB on December 22, 2015, as well as two deposits of 15,030,000 RUB and 5,400,000 RUB on January 14, 2016. On appeal, the Petitioner does not offer any new evidence or statements to resolve the above inconsistencies but rather claims his original submission and prior responses to the Chief's RFE and NOID show there are no discrepancies in the record. We disagree. The documentary evidence above displays inconsistencies between documents purporting to show the same deposits and withdrawals. We have reviewed all the documents in the record and conclude they do not reconcile the inconsistencies in the record.

Next, there are inconsistencies between the Petitioner's claimed employment with [redacted] and his employment as reported in two U.S. non-immigrant visa applications. In this case, the Petitioner claims to have earned 49,818,772 RUB while employed at [redacted] from May 12, 2012, through the time of filing his EB-5 petition on February 9, 2016. However, the Petitioner filed two U.S. non-immigrant visa applications on June 10, 2013, and October 26, 2016, where the Petitioner claimed to have been employed at [redacted] earning 50,000 RUB per month. On appeal, the Petitioner attempts to resolve this inconsistency by claiming the Petitioner was employed at [redacted] as a general manager but the Petitioner was the founder, owner, and manager of [redacted] which gave "no indication that [the] Petitioner was a full time employee in accordance with the regulation of the Russian Federation..." The Petitioner's statements on appeal are not supported in the record as his October 26, 2016, non-immigrant visa application indicates he was the director of [redacted] and not the general manager. Additionally, the Petitioner is relying on foreign law to claim he was not a full-time employee of [redacted] When relying on foreign law to establish eligibility, the application of 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 Petitioner has not provided any documentary evidence of the regulation of the Russian Federation they claim shows the Petitioner was not considered a full-time employee of [redacted] and therefore has not reconciled the inconsistencies in the record.

Finally, the Petitioner has not documented the lawful source or path of funds used to invest in [redacted] or the lawful source of the funds [redacted] used to disburse wages and dividends to the Petitioner. The record indicates the Petitioner founded [redacted] in 2012 with an investment of 10,000 RUB. However, the Petitioner did not provide any documentary evidence, despite being requested by the Chief in her RFE and NOID requests, showing the lawful source of these funds. Additionally, the Petitioner did not provide any requested evidence showing how [redacted] was able to pay the Petitioner 1,082,875 RUB eighteen months after [redacted] was created with a single 10,000 RUB investment. 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 failed to provide sufficient documentation to identify the lawful sources of his capital as required by regulation.

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 NCE would likely create the requisite number of jobs for qualifying employees within two years. *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.