U.S. Citizenship and Immigration Services

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

In Re: 25223119

Date: APR. 30, 2024

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) (2018).[1] This fifth preference (EB-5) classification makes immigrant visas available to noncitizens 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 document the lawful source of the $500,000[2] she claimed to have invested in [redacted], the NCE, which is associated with [redacted].[3] On appeal, the Petitioner submits a brief and additional evidence, maintaining that she has established her eligibility for the EB-5 classification.

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 dismiss the appeal.

## I. LAW

A noncitizen may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. A noncitizen may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. Regional centers can pool immigrant

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[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the EB-5 program, including the designation of targeted employment areas and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed her petition in September 2018, the relevant law then in existence governs this appellate adjudication.

[2] The Petitioner indicates that the NCE is in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2018).

[3] [redacted] is an entity that U.S. Citizenship and Immigration Services (USCIS) has designated to participate in the EB-5 program. 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) (2018).

(and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii) (2018).

A noncitizen 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 (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, the noncitizen must show that their 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. at 210-11; *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.[4] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

## II. ANALYSIS

In this case, the Petitioner claims to have invested at least $500,000 in the NCE. According to pages 6 and 11 the business plan, the NCE seeks to solicit up to $44 million from noncitizen investors to facilitate the construction and operation of "a luxury boutique condo-hotel" along the [redacted] in Texas. The business plan states that the condo-hotel will comprise of "[t]he 167-room [redacted] Hotel and 66 condos."

Bank records show that on September 2, 2018, the Petitioner remitted 1,876,750 Saudi Riyal (SAR) from her [redacted] account, with account number ending in 0014, to the NCE's account.[5] The Petitioner claimed that the remittance was her EB-5 investment and that the amount was equivalent to $500,000. In a September 2018 letter, [redacted] chief financial officer stated that the Petitioner had invested in the NCE by paying a "$500,000 Aggregate Purchase Payment," which "was deposited into [NCE's] Escrow Account."

In a June 3, 2021, statement, the Petitioner declared that "all funds invested in [the NCE] originate[d] from a lawful source." She explained that in 1999, her father gifted her "a 5.9% share of [redacted]"[6] which is "a pastries and Arabic sweets" company that "has more than 2,000 employees." She further stated that she has "been receiving lawful distributions of monies resulting from [her] ownership share in [the company] since 1999." She reiterated on page 6 of her appellate brief that "her lawful source of funds stemmed from company distributions." Page 17 of the appellate brief provides that she has "consistently claimed distributions totaling SAR 2,332,606 were

[4] 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).

[5] Bank records also show that the Petitioner remitted SAR 187,675 in administrative fees to [redacted] administrative account on September 2, 2018.

[6] Some materials in the record, including bank records, indicate that the name of the company is [redacted]

deposited into [her] [redacted] account," with account number ending in 0014, and that between August 2014 and September 2018, she "received a total of SAR 2,731,590 in distributions from the company."

Notwithstanding her claims, the record is insufficient to document the complete path of the Petitioner's purported EB-5 investment, tracing the path of the funds back to a lawful source. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Specifically, while the record confirms that her account ending in 0014 had received funds from lawful sources, the record lacks sufficient evidence confirming that other amounts that the account had received were also from lawful sources. The evidence substantiates the Petitioner's receipt of distributions from [redacted] The company's bank statements and dividend declaration statements, as well as the Petitioner's bank statements show that the business remitted funds from its account(s)[7] to the Petitioner's account ending in 0014, including SAR 1,309,565[8] on August 20, 2014; SAR 825,854 on August 9, 2015; SAR 50,000 and SAR 346,171 on December 17, 2015; and SAR 200,000 on May 20, 2018. These amounts totaled SAR 2,731,590. In addition to these amounts, the record also includes documents showing that the Petitioner had received other distributions from the company, including SAR 437,309 on December 19, 2012; and SAR 328,100 on May 25, 2013.

However, the Petitioner's account ending in 0014 also received amounts from sources. In response to the Chief's request for evidence, the Petitioner presented the complete bank record for her account ending in 0014, covering the period between August 1, 2014, and May 31, 2018. Her bank record reveals that in addition to receiving distributions from the company, the Petitioner also received large sums from other sources, including SAR 1,500,000 on December 18, 2017; SAR 40,000 on February 16, 2016; and a total of SAR 1,290,000 on March 24, 2015. On page 15 of her appellate brief, the Petitioner acknowledges the receipt of these amounts, but she has not specified the sources of these amounts or established that they, as well as other amounts not from [redacted] did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e).

Instead, on appeal, the Petitioner asserts that she need not document the lawful source of all the funds in her account ending in 0014. She argues on page 12 of her appellate brief that "[t]here is no law, regulation or policy which require that funds derived from lawful means cannot be 'comingled' with other funds" and that she is not required to establish that "every dollar invested be sourced solely on its own without ever being commingled with another dollar." She further claims that because the distributions she had received from [redacted] between 2012 and 2018 could sufficiently finance her EB-5 investment, she need not document the lawful source of other sums her account had received during the same period.

We disagree. The Petitioner acknowledges on page 18 of her appellate brief that "Money is inherently fungible" and that "Money is fundamentally interchangeable." As money is fungible, the Petitioner has not established which amounts her account received financed her purported EB-5 investment and which amounts funded other debits from the account between August 1, 2014, and May 31, 2018.[9] As

[7] The bank records and the associated English translations list two account numbers – [redacted] and [redacted] – for [redacted]

[8] The Petitioner claims on page 20 of the appellate brief that she was entitled to SAR1,459,565 of distribution in August 2014, but received SAR 1,309,565 because she gifted SAR 150,000 to her sister.

[9] The Petitioner's bank record for the account ending in 0014 indicates that large sums were debited from the account between August 1, 2014, and May 31, 2018.

such, she must document the lawful source of all the funds her account ending in 0014 received before September 2, 2018, when she remitted SAR 1,876,750 to the NCE as her EB-5 investment.

Moreover, the Petitioner has not submitted bank records covering the period immediately before she remitted SAR 1,876,750 to the NCE on September 2, 2018. Specifically, she has not offered bank statements covering the period between June 1, 2018, and August 31, 2018. Without additional corroboration, the Petitioner has not established that the funds she had in her account as of May 31, 2018, financed her purported EB-5 investment three months later, on September 2, 2018.

Similarly, the Petitioner has not submitted bank records covering the period from December 2012 through July 2014. During this period, she received at least two distributions – SAR 437,309 on December 19, 2012; and SAR 328,100 on May 25, 2013 – from [redacted] The Petitioner claims on pages 18 and 19 of her appellate brief that these amounts had financed, in part, her EB-5 investment. Without additional corroboration, the Petitioner has not demonstrated that the funds her account lawfully received in 2012 and 2013 had remained in the account to finance her EB-5 investment years later in 2018.

Based on the reasons we have discussed, the Petitioner has not sufficiently established that the funds she claimed to have invested in the NCE did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e). The record, including evidence she offers on appeal, does not sufficiently document the complete path of her purported EB-5 investment, trace it back to a lawful source. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. While we acknowledge the passage of time since the possible creation of certain relevant documents, we find that without additional corroborating evidence, the record lacks sufficient evidence confirming that her purported EB-5 investment was entirely financed by distributions she received from [redacted] between 2012 and 2018. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195; *see also Mo v. USCIS*, __ F. Supp. 3d __, 2024 WL 804267, *6 (D.D.C. Feb. 27, 2024) (noting that USCIS did not err in requesting proof of household expenditure from 20 years ago).

## III. CONCLUSION

For the reasons we have discussed above, we conclude that the Petitioner has not established, by a preponderance of the evidence, her eligibility for the classification. Specifically, she has not demonstrated the lawful source of her purported EB-5 investment. *See* 8 C.F.R. § 204.6(j)(3), (e); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning her eligibility.[10] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976)

[10] The Chief discussed other grounds to deny the Petitioner's petition. For example, the Chief concluded that the Petitioner had provided inconsistent evidence regarding how she acquired her ownership interest in [redacted] While she claimed that her father gifted her the ownership interest, the "preamble" section of the company's articles of association states that she had paid her father for the ownership interest. The Chief also concluded that the Petitioner has failed to document the lawful source of the funds she purported paid to her father. In addition, the Chief discussed inconsistent evidence regarding the amounts and dates of the distributions the Petitioner had received from the company, while also noted that "the record does not contain sufficient evidence of the source(s) of the funds used by [her] father to

(stating that "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).

It is the Petitioner's burden to demonstrate her eligibility for the EB-5 classification, which includes establishing the lawful source of her purported EB-5 investment. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Here, the Petitioner has not made such a showing.

**ORDER:** The appeal is dismissed.

start . . . or acquire ownership interests" in the company. We reserve these and other issues not discussed in this decision for future consideration if the need arises.