U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-Z-

DATE: AUG 2, 2019

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: 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 classification. Specifically, the Chief determined that she did not document the lawful source of the funds she remitted to [redacted], the NCE, which is associated with a United States Citizenship and Immigration Services (USCIS) designated regional center, EB-5 [redacted] The Chief subsequently denied the Petitioner's combined motions to reconsider and reopen the matter. On appeal, the Petitioner submits additional evidence and maintains that she has shown eligibility for the benefit sought.

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] as the Petitioner has done in this case. 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).

II. ANALYSIS

In February 2015, the Petitioner remitted $500,000 to the NCE's escrow account as her EB-5 capital.[2] According to page 4 of the October 2014 business plan, the NCE intends "to raise up to $49.5 million of EB-5 capital to make a subordinated debt investment in [redacted]," which will "develop, own, and manage [redacted] (the "Project"), a 23-story mixed-use development in [redacted] Massachusetts." As we will explain below, we find that the Petitioner has not established, by a preponderance of the evidence,[3] her eligibility for the classification. Specifically, she has not documented the lawful source of her funds.

To be eligible for the EB-5 classification, a petitioner must establish 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, for example, foreign business and tax records or documentation identifying any other sources of funds. 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.[4] *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

In this case, the Petitioner alleges that her EB-5 capital derived from a 3,000,000 renminbi (RMB or Yuan) loan that she and her spouse, [redacted] obtained from [redacted] Development Bank in October 2014. The Mortgage Contract indicates that the loan is secured by the couple's property in [redacted] China. The record shows that in 2005, the couple paid RMB 270,887 as a down payment, and that in 2008, they fully repaid the RMB 400,000 loan they had relied on to purchase the property. The Petitioner has presented certificates verifying her and [redacted]'s employment and earnings.

The record, however, includes inconsistent evidence relating to [redacted]'s work history and income, which the Petitioner claims had partially financed the purchase of the property that secures the 3,000,000 RMB loan, the proceeds of which she remitted to the NCE. In an April 2015 statement, the Petitioner states that in 2005, [redacted] "worked as the Sales Manager in [redacted],[5] where he had worked since October 2001." She offers a July 2014 employment certificate from the company, stating that he had worked between October 2001 and October 2007, and that "[h]is annual income after tax [was] RMB 100,000 Yuan including allowance, bonus and basic salary since 2001."

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[2] The Petitioner indicates that the NCE is located 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). Evidence shows that she also remitted $45,000 to the NCE's general partner [redacted], to cover fees and expenses.

[3] If a petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *see also* 6 *USCIS Policy Manual* G.2(E), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[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] The Petitioner indicates on appeal that the company has changed its name to [redacted]

In response to the Chief's request for evidence (RFE), however, the Petitioner submitted a second employment certificate, dated March 2017, for [redacted] The second certificate indicates that [redacted]'s annual earnings had not remained the same between 2001 and 2007; rather, they had fluctuated between RMB 6,000 and RMB 145,710, totaling RMB 608,336. These figures, which include [redacted]s earnings that the Petitioner allegedly used to purchase the property that secures the RMB 3,000,000 loan, are inconsistent with the information contained in [redacted]s July 2014 employment certificate. While the Petitioner maintains that the July 2014 certificate references [redacted]'s average annual income, the certificate itself does not support this position, because it specifically states that "[h]is annual income after tax [was] RMB 100,000 . . . since 2001." The document does not specify that the figure is an average over the years.

In addition, in two[6] separate, non-immigrant visa applications that [redacted] filed in April 2013, he indicated that, at the time, he was working as a "general manager" for [redacted]' earning RMB 8,000 monthly or RMB 96,000 annually. He stated in his visa applications that he had no previous employment history. These statements contradict the Petitioner's claim that he had worked for [redacted] between 2001 and 2007, and that he used his earnings from that job to purchase the property that secures the couple's 3,000,000 RMB loan.

Moreover, the Petitioner has submitted documents presenting conflicting portrayals of [redacted]'s work history and the dates at which he worked at [redacted] The record includes a document entitled "Work Experience of [redacted]" which the Petitioner submitted to the Chief in her RFE response. It provides that [redacted] had worked for: (1) [redacted] between 1996 and 2001; (2) [redacted] between 2001 and 2007; and (3) [redacted] Limited between 2010 and 2017. This employment history, however, contradicts statements from [redacted], [redacted], and [redacted][7] which the Petitioner submits on appeal, as well as a document entitled "Personal Interests Record of [redacted] (Payment Information of the Insured)," which she presented to the Chief in response to the notice of intent to deny the petition. The statements from the above referenced individuals and the document concerning [redacted]s social insurance indicate that [redacted]s employment with [redacted] did not end in 2007, as noted in the two employment certificates. Rather, it ended in June 2014. Furthermore, the information from "Work Experience of [redacted]' is also inconsistent with work information [redacted] listed in his non-immigrant visa applications, which do not reference his employment with [redacted] or, as mentioned [redacted]

The record includes inconsistent evidence relating to [redacted]s employment history and earnings, "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 Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

[6] While the Chief indicated in her decision that [redacted] had submitted three non-immigrant visa applications, the record shows that he had submitted two, one on April 17, 2013, and the other on April 28, 2013.

[7] In a joint statement dated May 21, 2018, the Petitioner and [redacted] state that the three individuals were his colleagues at [redacted]

In her attempt to reconcile the conflicting accounts, the Petitioner alleges that [redacted] had worked on a part-time basis as an agent or representative for [redacted] between 2007 and 2014. This assertion does not resolve the inconsistency, because [redacted]s July 2014 and March 2017 employment certificates specify that he had worked for the company until October 2007 and that his "last position" was "Sales Manager." These two documents make no mention to his purported position as the company's agent or representative between 2007 and 2014.

The Petitioner has also attempted to resolve the inconsistencies relating to [redacted]'s employment by claiming that a travel agency had made mistakes on his non-immigrant visa applications. She has presented an October 2017 statement from [redacted], in which he states that he "entrusted [redacted] to complete and submit his non-immigrant visa applications. He claims, however, that he is unable to submit corroboration from the company because "the processor who applied visa for [him] at that time has resigned and the travel agency did not keep any related materials on file." Unsubstantiated assertions from the Petitioner or her spouse do not constitute "competent objective evidence pointing to where the truth, in fact, lies." *See Ho*, 19 I&N Dec. at 591-92. Significantly, as the Chief pointed out in her decisions denying the petition and combined motions, the last page of [redacted]s visa applications included the question, "Did anyone assist you in filling out this application," to which he answered in both applications, "No." This information does not support the Petitioner's assertion that the inconsistencies in [redacted]'s employment history were the result of a travel agency's mistakes. We have reviewed all the documents in the record, including those the Petitioner presents on appeal, and conclude that they do not reconcile the consistencies in the record concerning [redacted]s date of employment or amount of compensation.

Regardless, while the Chief did not discuss this issue, we find that the Petitioner has not sufficiently documented the complete path of the $500,000 that she remitted to the NCE as EB-5 investment. *See Izummi*, 22 I&N Dec. at 195 (noting that a petitioner must show that the funds were his or her own by "document[ing] the path of the funds"). In a January 22, 2015, statement, the Petitioner states that she remitted RMB 3,204,000 to her relatives and friends, who then helped her transfer the funds from her account in China to her account in the United States. The loan that she and [redacted] obtained from [redacted] Development Bank was in the amount of RMB 3,000,000, which would have been insufficient to cover the RMB 3,204,000 she sent to her relatives and friends. The record does not sufficiently confirm the source(s) of the funds that did not originate from the loan. For example, the Petitioner has not documented that she and/or [redacted] had saved the amount from their earnings.

Additionally, in support of her initial filing, the Petitioner offered her bank statement for her account in China ending in [redacted] from which she claims to have sent funds to her relatives and friends, who then remitted them to her account in the United States to invest in the NCE. While the bank statement lists a RMB 3,000,000 deposit in October 2014, which was when she received the loan proceeds, it also lists a number of other deposits, including: (1) RMB 836,081.74 on November 18, 2014; (2) RMB 2,020,197.51 on December 2, 2014; and (3) multiple deposits, some in large sums, between December 8 and December 18, 2014. The bank statement further shows that during the same period, between November and December 2014, the Petitioner sent funds to her relatives and friends. The Petitioner has not offered sufficient information on the source(s) of the above listed deposits, which

financed, at least partially, her EB-5 investment, or demonstrated that the deposits are of lawful origin(s).

Based on the reasons we have discussed above, 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. Specifically, she has not demonstrated, by a preponderance of the evidence, that she and [redacted] had lawfully accumulated sufficient funds to purchase the property that they used to secure the RMB 3,000,000 loan, the proceeds of which she used as EB-5 capital, or documented the complete path of the funds she remitted to the NCE.

III. CONCLUSION

The Petitioner has not documented the lawful source of the capital she remitted to the NCE. 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.

Cite as *Matter of C-Z-*, ID# 2918542 (AAO Aug. 2, 2019)