U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30130178

Date: DEC. 02, 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). 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 that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.[1]

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner did not sufficiently demonstrate the lawful source of funds invested into [redacted] the new commercial enterprise (NCE). 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 dismiss the appeal.

I. LAW

To be eligible for the EB-5 classification, 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 (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. *Id.*

[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 his petition on March 9, 2018, the relevant law in existence on that date governs this appellate adjudication.

II. ANALYSIS

The Petitioner claimed that he invested $500,000 in the NCE, which is affiliated with [redacted] The NCE proposed to pool $40 million and lend the entire amount to [redacted] the job creating entity (JCE). The JCE intends to construct a 46-story building housing 238-room [redacted] Hotel, 121 condominium units, and retail space in [redacted] Florida.

The sole issue here is whether the Petitioner has demonstrated the lawful source and path of his investment funds. The Petitioner asserted that his investment funds of $500,000 originated from the sale of his real property in Iran that he purchased in 2001. The Petitioner also claimed that he used the money exchange services of [redacted] to convert his funds in Iranian rials (IRR) to U.S. dollars and his funds of $500,000 were remitted to his attorney's trust account [redacted], then to the NCE's account in the United States.

Upon de novo review, we conclude the Petitioner did not establish that his funds invested in the NCE were obtained through lawful means for the reasons discussed below.

A. Source of Funds

The Petitioner claimed that he purchased a real property in May 2001 for IRR 210,000,000 using his accumulated employment earnings. In support of his claim, the Petitioner provided a chart showing the year-by-year accumulation of his salaries from July 1995 to March 2008. The Petitioner also submitted an employment verification letter confirming his employment as a custom broker administrator with [redacted] from July 1995 to August 2008 and his net salaries and commission earned each year. However, the Chief found that "there is no evidence provided to show that funds belonging to Petitioner were used to purchase the real property" as the Petitioner did not show any bank statements or tax returns to corroborate that he used his own income earnings to purchase the real property in 2001. On appeal, the Petitioner contends that the accumulated income of IRR 256,480,000 by March 2001 "was sufficient income to purchase the Property for 210,000,000 IRR in May 2001" by a preponderance of evidence.

To determine whether a petitioner has met his burden under the preponderance standard, we consider the quality (including relevance, probative value, and credibility) of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376; *see also Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Based on the review of the records, we conclude that the evidence is insufficient to establish that the Petitioner used his accumulated income to purchase the real property. Although the Petitioner resubmits on appeal information about his employment and earnings, including sample payment stubs and salary records, the record lacks relevant and probative evidence showing that he had in fact retained and saved enough income from his salaries, such as bank statements or tax returns, prior to the purchase of the real property in May 2001.

The Chief also determined that "no evidence was provided to establish that [the investment] funds derived from the sale of real property by the Petitioner." The Petitioner submitted a bill of sale dated March 16, 2017, indicating that he sold his real property for IRR 32,200,000,000 and provided a chart documenting a series of deposits purportedly made by the buyer between March 2017 to October 2017,

totaling the sale price of IRR 32,200,000,000. According to the chart, the buyer made 10 separate deposits into the account ending in 4110 between March 16, 2017 to April 8, 2017, and 12 separate deposits into the account ending in 0912 between April 22, 2017 to October 4, 2017. The Petitioner also provided two separate [redacted] statements to corroborate that the buyer deposited sale proceeds in the Petitioner's bank account ending in 4110 and his daughter's bank account ending in 0912. However, the Petitioner did not provide any evidence that these deposits were made by the buyer or originated from the buyer's bank account.

On appeal, the Petitioner submits as new evidence a series of deposit slips from the buyer corresponding to the claimed deposit amounts previously shown in his and his daughter's bank accounts. However, where, as here, a petitioner has been put on notice of a deficiency in the evidence and given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the Petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the Chief's request for evidence (RFE) and notice of intent to deny (NOID). *Id.*

Even if we considered the evidence, it is inconsistent with the claims previously offered with the initial filing. Although the Petitioner originally claimed that the sale proceeds were deposited in two different bank accounts, the new evidence shows that all of the buyer's deposit were made to "the bank account of the Investor's Daughter at [redacted] (a/c no. -0912)" and there is no indication that any of the buyer's deposits were made in the account ending in 4110 as the Petitioner initially claimed. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As such, the Petitioner has not sufficiently established that the funds invested in the NCE has been obtained through lawful means.

B. Paths of Funds

The Petitioner asserted that he used the money exchange services of [redacted] to convert his funds from Iranian rials to U.S. dollars for the purpose of EB-5 investment. The review of the record reveals that the Petitioner made an agreement with [redacted] to purchase $564,065 for IRR 19,999,998,050 and IRR 3,429,578,550. The Petitioner attempted to show that the funds from his daughter's account ending in 0912 were remitted to [redacted] per this agreement. The record, however, did not contain complete bank statements from [redacted] receiving these deposits. Instead, the Petitioner submitted credit notices showing that funds were transferred to [redacted] from a bank account ending in 0912. The Petitioner also submitted a transfer notice from his daughter's account ending in 0912 indicating a "debit" of IRR 3,429,580,000 but the record did not contain a debit notice for the remaining IRR 20,000,000,000.

Additionally, the record also includes "single customer credit transfer" documents from an unknown source, [redacted] Turkey, depositing the following amounts to [redacted] in USA": $100,000 on November 13, 2017; $100,000 on November 15, 2017; $99,000 on November 21, 2017; $97,000 on December 1, 2017; and $70,065 on December 1, 2017. These amounts correspond to the series of deposits made to [redacted] bank account [redacted] ending in 1808) belonging to the Petitioner's attorney in the United States. The Petitioner then submitted a letter from NCE dated December 13, 2017, indicating that they received $550,000

on his behalf. However, the Chief's RFE and NOID subsequently found that there are evidentiary breaks in the path of the Petitioner's investment funds.

In his RFE response, the Petitioner stated that [redacted] contracted with two companies in Turkey, [redacted] to exchange currency. The Petitioner explained the path of funds as follows: that [redacted] "transferred funds to [redacted] in Iran and in return [redacted] transfer funds from their bank accounts in Turkey to [redacted] account." After the NOID, the Petitioner further expanded the path of funds to include another corporation, stating that [redacted] first entered into an agreement with [redacted] for its currency exchange business. The Petitioner stated that as [redacted] is a company in Iran that sells and exports pistachios to Turkey" and "[t]wo of [redacted] customers are [redacted] agreement with [redacted] was to purchase $657,000 from [redacted] and in return, [redacted] would purchase 39 metric tons of pistachios for USD 351,000 and USD 306,000 from [redacted], respectively. The agreement between [redacted] indicates that "the USD equivalent will be paid to the Exchange Office in Turkey."

The Petitioner has asserted that he used the money exchange services of a licensed money exchanger and had no control over how [redacted] transferred his funds to the United States. In support, he submitted [redacted] business permit for currency exchange as issued by the [redacted] on July 2, 2017, valid "five years from issue date." On appeal, the Petitioner submits duplicate copies of the previously submitted documents and offers additional evidence that the companies involved in the currency exchange are legitimate businesses registered in Turkey. The Petitioner also submits a letter from an attorney in Iran stating that "foreign currency remittances are mainly made through authorized exchanges through currency clearing and deposit of fund in rials to the account of exporting companies." Because [redacted] is a licensed money exchanger and contracted with legitimate businesses to transfer the funds, the Petitioner contends that the transfer of his funds should be considered lawful and permissible for EB-5 purposes under the preponderance of the evidence standard.

However, a petitioner must demonstrate by a preponderance of the evidence that the capital was his or her own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. To show that the capital was his or her own, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. at 195. The record must trace the path of the funds back to a lawful source. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. USCIS' complete path interpretation of the regulations is its authoritative position as explained in *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024). These decisions require the petitioner to establish the complete path of funds to demonstrate that the funds were obtained through lawful means. Therefore, the Petitioner bears the burden of demonstrating that the funds transferred by the third-party exchangers were obtained through lawful means.

Although the Petitioner has established that [redacted] held his funds in Iranian rials, the Petitioner has not sufficiently documented the path or source of the swapped funds from Iran to Turkey which were later remitted in U.S. dollars to [redacted] and to the NCE. Although the agreements, invoices, and customer transfer orders show that [redacted] and other companies worked together to do the currency

exchange on behalf of the Petitioner, the Petitioner did not provide documentary evidence showing that [redacted] and the rest of companies who entered into the agreement with [redacted] had deposited and retained the Petitioner's original funds. The Petitioner's funds were comingled with other sources in various bank accounts as they moved from the third-party exchanger, [redacted] then to another third-party, [redacted] then through two other companies in Turkey, and the Petitioner has not demonstrated that funds in each of the different bank account involved were obtained through lawful means. Since the Petitioner is unable to establish the complete path of the Petitioner's funds, he has not sufficiently demonstrated the source of his funds that eventually arrived in [redacted] and in NCE's account in the United States.

Due to the evidentiary insufficiencies discussed above, the Petitioner has not demonstrated by a preponderance of the evidence that the funds invested in the NCE derived, both directly and indirectly, from lawful means. It is the Petitioner's burden to establish his eligibility for the immigration benefit. *Chawathe*, 25 I&N Dec. at 375. Here, the Petitioner has not met his burden.

III. CONCLUSION

As the evidence in the record does not sufficiently demonstrate the lawful source of funds, we conclude that the Petitioner has not established by a preponderance of the evidence that he is eligible for the immigrant investor visa classification.

ORDER: The appeal is dismissed.