U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-D-

DATE: DEC. 3, 2018

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: FORM I-526, IMMIGRANT PETITION BY ALIEN ENTREPRENEUR

The Petitioner seeks EB-5 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 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 sought. Specifically, she found that the Petitioner failed to demonstrate the lawful source of funds used for her investment.

On appeal, the Petitioner submits a brief and additional evidence and asserts that she is eligible for the classification sought.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A foreign national may be classified under section 203(b)(5)(A) of the Act as an immigrant investor if he or she invests the requisite amount of qualifying capital in an NCE. The NCE can be any lawful business that engages in for-profit activities. The investor must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j). 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 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 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).

In addition, the petitioner's invested capital must 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. *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.[2] *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. Where these records are not available, the petitioner must also demonstrate their lack of availability. *See* 8 C.F.R. §103.2(b)(2)(ii).

II. ANALYSIS

In July 2014, the Petitioner filed the instant petition. In January 2018, the Chief issued a notice of intent to deny (NOID) on the grounds that the Petitioner had not established the lawful source of funds used in her investment. The Petitioner asserts that the funds for this investment derived from the sale of two real estate properties, one purchased by her spouse, and one that she purchased. The record establishes that in March 2004 the Petitioner purchased a property for RMB 819,120.00 using retained income earnings and sold this property in October 2013 for RMB 3,090,000. The record also shows that purchased real estate using retained earnings and a bank loan in January 2010 for RMB 1,126,920 and sold this property in April 2014 for RMB 1,200,000. The Chief identified numerous discrepancies in employment history, finding these inconsistencies called into question the lawful source of funds he used to purchase the property. The Chief also found that the Petitioner had not demonstrated the lawful source of funds she used to purchase her own real estate, the sale proceeds of which she used for the remainder of her investment. After reviewing the response to the NOID, the Chief then denied the petition in March 2018, finding that the Petitioner had not overcome her concerns regarding the source of earnings.

On appeal, the Petitioner presents additional evidence to try to resolve the inconsistencies in her spouse's employment and asserts her eligibility for the classification sought. For reasons discussed below, we find that the totality of the record does not establish that the Petitioner qualifies for the immigrant investor classification.

The Petitioner bases her petition on a $500,000[3] investment into an NCE associated with a USCIS-designated regional center, The Petitioner demonstrates that she transferred an aggregate of Renminbi (RMB) 3,308,020

[2] These requirements confirm that the funds utilized are not of suspect origin. *See 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 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).

[3] 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).

from her account to ten parties, who used these funds to purchase $545,030.00 and sent these funds to her account. The record also establishes that the Petitioner next transferred $545,004.00[4] from her account to the NCE's escrow account in May 2014.

1. Petitioner's Spouse's Source and Path of Funds

In her denial, the Chief questioned the lawful source of funds used to purchase the property whose sale proceeds funded a portion of the Petitioner's investment. She identified several discrepancies between the employment listed on his resume and those reported elsewhere in the record.[5] For example, she indicates he was employed by as an accountant, but the NOID response indicates that he was employed by the at that time. Regarding employment with the Chief found discrepancies between the petition and the NOID response in the address, supervisor's name, and employment dates.

The Chief also identified differences between resume and the record for his employment with She noted first that his resume listed employment from May 2002 to December 2004 with but that he later declared he was employed with during this time period. She also observed that the business registration for this company provided in the NOID response indicates it was formed in February 2004, and that the record lacked an explanation as to how worked for a company not yet formed. The Chief also contrasted resume, where he lists his occupation as "General Manager" of with the NOID response where his title is listed as "deputy Chairman of the Board of Directors." Similarly, the Chief observed a discrepancy in title as reported for his employment with noting that his resume lists his title as president, and the NOID response listed his title as chairman of the board.

On appeal, the Petitioner submits no additional evidence regarding the discrepancies in titles and company names but explains that these differences were due primarily to reporting his resume from memory. With regard to employment with , the Petitioner explains that he was "integral in working for the company and preparing the company for its official formation in February 2004" and provides the company business license and an income certification for her spouse indicating the same period of employment. She provides no other evidence

[4] This amount included both the Petitioner's $500,000 investment and a $45,000 syndication fee. The syndication fee is not considered to be part of the Petitioner's investment.

[5] The Chief also noted conflicting statements regarding employment between 1982 and 1987, where he indicated he simultaneously worked as an accountant at a company, served in the Chinese navy, and attended junior college. On appeal, the Petitioner provides a copy of a Chinese law addressing such a work situation. However, as the record does not demonstrate the lawfulness of the source of funds used by the Petitioner, we need not address this issue.

demonstrating his employment with the company prior to its formation, such as bank records or tax statements. The Petitioner must resolve these 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). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* Here we find that these inconsistencies call into question employment as reported, and thus the lawful source of funds generated by this employment and retained for use in the purchase of real estate. As proceeds from the sale of this real estate were used to fund part of the Petitioner's investment, these discrepancies also call into question the lawful source of this investment.

Although not addressed directly by the Chief in her decision, we find that the record fails to establish the lawful source of funds used by to purchase his real estate. The record contains a statement from listing all of his employment and associated earnings. It declares that from March 1993 to May 2002 he was employed with and earned a total of RMB 550,000. In this document, he maintains that he worked for from May 2002 to December 2004, earning a total of RMB 186,000. He also attests that he was paid a total of RMB 330,000 for his January 2005 to October 2006 employment with . He states that, from October 2006 to April 2011 he earned a total of RMB 2,050,000 working for From April 2011 to October 2014, avows that he received an annual income of RMB 300,000 for employment with Finally, he states that, from May 2007 to May 2014, he also earned an annual income of RMB 200,000 from while serving as chairman of the board.[6] The record contains income statements corroborating each of assertions, but lacks bank statements or other evidence demonstrating that these earnings were retained and used for the purchase of property in January 2010. Accordingly, the Petitioner has not established that portion of funds invested in the NCE that derived from the sale proceeds of property derived from a lawful source and meet the regulatory definition of capital set forth in 8 C.F.R. § 204.6(e).

2. Petitioner's Source and Path of Funds

Although not addressed by the Chief in her decision, we find that the record does not demonstrate the remainder of the Petitioner's invested funds were sourced lawfully. The Petitioner asserts that she used accumulated income earnings to purchase real estate in March 2004, and that funds retained from sale of this property were used to fund a portion of her investment. The record contains evidence documenting the purchase and subsequent sale of this property.

However, evidence in the record does not demonstrate that the Petitioner retained the property sale proceeds from the time of sale until the time of her investment. She provides bank statements showing that in October 2013 she received 2,540,000 RMB[7] in proceeds into her

[6] We note that the Petitioner indicates his employment with dated from May 2007 to July 2016.

[7] The sales price of the home was RMB 3,090,000. The Petitioner received this amount; the remaining RMB 550,000 was deposited in her husband's account.

account and that she transferred RMB 2,540,296.33 to her account. On the same day, she withdrew 4,000,000 RMB from her account. The Petitioner asserts that she used these funds to purchase fund, which appears to be some sort of investment vehicle. However, the record lacks corroborative evidence of the Petitioner's claimed purchase of the fund. Furthermore, while the Petitioner contends that the other money in the account used in the alleged purchase came from her accumulated earnings, the record does not contain evidence to establish their lawful source.

Additionally, the Petitioner then states that she redeemed her fund income in April 2014 and then loaned the proceeds to an associate, who subsequently repaid using lawfully sourced funds. However, the record lacks evidence, such as statements or other documents, showing that the Petitioner remained invested in this fund between November 2013 and April 2014. Thus, the record does not establish the lawful source of the funds the Petitioner lent to her associate, whose repayment funded a portion of the investment she made in the NCE. Accordingly, the record does not demonstrate that this portion of her investment derived from lawful sources. The Petitioner must address this issue in any future proceedings. Regardless, for reasons discussed above, she has not shown eligibility for the classification.

III. CONCLUSION

The Petitioner has not demonstrated that her investment derived from lawfully sourced funds and has not traced the full path of her investment to lawful sources. She therefore has not established eligibility for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of F-D-*, ID# 1713761 (AAO Dec. 3, 2018)