U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27263751

Date: DEC. 06, 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 funds she claimed to have invested in [redacted] (the NCE), which is associated with [redacted], an entity that U.S. Citizenship and Immigration Services (USCIS) designated to participate in the EB-5 program.[2] Specifically, the Chief determined that the Petitioner did not sufficiently document the path of funds from her to the 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

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

[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 filed her petition in August 2018, the relevant law then in existence governs this appellate adjudication.

[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) (2018).

(and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii) (2019).

An investor 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 complete path of the funds back to a lawful source.[3] *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (holding that demonstrating a "complete path" of funds is USCIS' authoritative position recognized by other relevant precedent decisions); *see also 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).

II. ANALYSIS

In this case, the Petitioner claims to have invested $500,000[4] in the NCE. According to its business plan, the NCE seeks to solicit funds from noncitizen investors to lend to [redacted] to facilitate the development of a [redacted] Hotel and residential condominium property in [redacted] Massachusetts.

According to the Petitioner, she received 13,300,000,000 Vietnamese Dong (VND) from her sale of real property on July 10, 2018, and deposited the full amount of the sales proceeds in her [redacted] account in Vietnam. Bank documents show that on July 27, 2018, she withdrew VND 13,300,000,000 from this account. She alleges that on the same day of her withdrawal, she handed VND 13,300,000,000 (equivalent to approximately $555,025) in cash to [redacted] an employee of [redacted] a Vietnamese business.[5] The Petitioner claims that [redacted] partnered with an Australian entity, [redacted] trading as [redacted].[6] She states that after she gave Mr. [redacted] the funds in Vietnam, [redacted] remitted $550,025 from its [redacted] account in Australia to the NCE's escrow account in the United States on her behalf. In a July 31, 2018 letter, the NCE acknowledged its receipt of $550,000 from the Petitioner on that date.

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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 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).

[5] The record includes a "Collaborative Contract" between [redacted] and Mr. [redacted] indicating that he was contracted to work as a "collaborator" for [redacted] between January 1, 2018, and December 31, 2018.

[6] The Petitioner has submitted documents indicating that [redacted] is an Australian business that is regulated by the governmental agency Australian Securities and Investments Commission.

For the reasons provided below, we conclude that the Petitioner has not established by a preponderance of the evidence, the complete path of the funds she purportedly invested in the NCE back to a lawful source.

First, as observed by the Chief, the Petitioner's initial submission contained no references to [redacted] and this company's claimed role in the Petitioner's currency exchange and transfer. It is unclear why the Petitioner omitted this information from her initial explanation of the path of her investment funds. The Petitioner's initial evidence included a [redacted] Tax Invoice" purportedly showing that the Petitioner's funds went from Vietnam, in VND, to Australia, in Australian dollars (AUD). The Petitioner also submitted an International Funds Transfer Instruction (IFTI) Report and a [redacted] transaction record showing her as the "sender" of the AUD funds to the NCE's escrow account in U.S. currency. Finally, she submitted a letter from the director of [redacted] stating that this entity collected VND 13,300,000,000 from the Petitioner on July 27, 2018. However, the Petitioner did not corroborate the information in the tax invoices with probative evidence, such as bank or financial institution remittance or transfer receipts verifying the alleged path of funds. For example, the tax invoice states that the Petitioner's "payment method" for the Vietnam to Australia remittance was a "deposit," but the record lacked evidence that the Petitioner made any deposit or transfer to the bank used by [redacted] for the overseas transfer, or that [redacted], which has no documented locations in Vietnam, "collected" the VND 13,300,000,000 from her.

Portions of this initial evidence also conflict with the Petitioner's subsequent assertion that Mr. [redacted] on behalf of [redacted] collected the VND 13,300,000,000 from her. In fact, in response to the Chief's request for evidence (RFE), the Petitioner clarified that her funds "did not leave Vietnam." This statement is inconsistent with the letter from [redacted] indicating that it collected the VND 13,300,000,000 from the Petitioner and appears to conflict with the information noted in the above-referenced transfer tax invoice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that "[i]t is incumbent upon the petitioner 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").

As noted, the Petitioner's response to the RFE introduced, for the first time, evidence related to [redacted] its relationship with [redacted] and the Petitioner's purported handover of VND 13,300,000,000 to Mr. [redacted] on July 27, 2018. However, the record lacks evidence of what Mr. [redacted] did with the VND 13,300,000,000 in cash he purportedly received from the Petitioner. The Petitioner has not presented objective evidence, such as a receipt issued to her for the transaction, bank records from [redacted] verifying that it received and deposited the Petitioner's funds, or other relevant documentation. In fact, the record does not contain any written statement or supporting documentation that originated with [redacted] or Mr. [redacted] Instead, to corroborate her claimed transaction with Mr. [redacted] the Petitioner provided a May 2021 affidavit from [redacted] who states she was employed by [redacted][7] She indicates that she witnessed Mr. [redacted] receipt of VND 13,300,000,000 from the Petitioner on July 27, 2018.

[7] The record includes an unsworn statement from [redacted] the claimed director of [redacted], who states she is "an immigration agent who connects EB5 investors to EB5 projects." Ms. [redacted] states that her company connected the Petitioner with [redacted] to assist her with her currency exchange and funds transfer to the United States.

The Petitioner also submitted a copy of an e-mail that originated from [redacted] which appears to be addressed to three employees of [redacted] The email confirms the USD to VND exchange rate for July 27, 2018, and indicates that "$555,025 USD + fee = 13,300,000,000.00 VND." Although the Petitioner characterizes this email as a "receipt" for her transaction with Mr. [redacted] the email contains no reference to the Petitioner, [redacted] or the transaction between the Petitioner and Mr. [redacted] that purportedly took place on that date. As such, this email is insufficient to corroborate the [redacted] employee's statement. As noted, the record does not contain statements, records, or other documents originating with [redacted] related to this purported transaction, or evidence of what Mr. [redacted] did with the funds the Petitioner claims she transferred to him on that date.

In addition, while the Petitioner asserts that [redacted] is affiliated or partnered with the Australian entity [redacted] and is authorized to accept money on its behalf in Vietnam, the submitted "Principal Contract" between the two companies does not support this assertion. According to this contract, customers in Australia seeking to send money to Vietnam, may remit funds to [redacted] in Australia. [redacted] under its trading name [redacted] would then transfer funds from its Australian account to [redacted] Vietnamese account, and [redacted] would locate the intended beneficiary or recipient in Vietnam and distribute the money to that person. The Principal Contract does not indicate the parties agreed that [redacted] would be responsible for accepting money in Vietnam on behalf of the Australian company to facilitate foreign currency exchange for VND to USD transactions or describe any terms or accepted procedures in place for such exchanges.

The Petitioner also submitted a copy of a "Collaboration Contract" between [redacted] and Mr. [redacted] which states his responsibility as a collaborator is to "[r]eceive list of overseas national currency exchange, VND and foreign currency from [redacted] to pay for customers at their houses and domestic beneficiary." Based on this limited information, the contract suggests he was contracted to perform duties consistent with the terms of the Principal Contract between [redacted] the Collaboration Contract does not indicate that Mr. [redacted] duties included collecting or accepting money from customers in Vietnam for [redacted] for the purpose of facilitating currency exchanges and remittances within or outside of Vietnam. Further, while this contract indicates that he was an authorized "collaborator" for [redacted] the record lacks evidence that the funds he is claimed to have collected from the Petitioner were transferred to an account owned by [redacted]

The record contains a "License for Foreign Currency Receiving and Payment Service" issued to [redacted] in 2011. The license indicates the Vietnamese government authorized the company "to provide services for receiving foreign currency from overseas Vietnamese and foreigners for payment to domestic beneficiaries" at its head office. An online printout from a Vietnamese government website similarly notes that [redacted] is authorized to conduct "other monetary intermediation," specifying that it may provide the "[s]ervice of receiving and payment of foreign currencies." Neither the business license nor the online printout supports the Petitioner's contention that [redacted] could lawfully accept VND in Vietnam for the Australian company, as the Petitioner claims happened in this case.

On appeal, the Petitioner emphasizes that [redacted] is a "licensed and fully-regulated money remitter in Australia," is registered under the Australian Securities and Investments Commission (ASIC) and Australian Transaction Reports and Analysis Centre (AUSTRAC), and "operates in Vietnam under the name [redacted] However, the record does not corroborate this company's formal

registration, operations or activities in Vietnam. Rather, the Petitioner explains that [redacted] relies on [redacted] services "to facilitate the exchange of VND currency to USD." Specifically, the Petitioner states that [redacted] "nets off the funds received in Vietnam by [redacted] and transfers the value of the transactions in USD to the beneficiary in the United States," after receiving an instruction from [redacted] representative confirming the collection of funds in Vietnam.

The RFE response included an explanatory statement from [redacted] director of [redacted] who states that the VND funds [redacted] representatives collect from clients are provided to [redacted] and serve as "intra-company funding from [redacted] She explained that this funding is one way that [redacted] can "fund the payouts in Vietnam for [redacted] outbound transfers from Australia" as it ensures that [redacted] "has immediate liquid funds to payout beneficiaries." However, this intracompany funding arrangement is not described in the Principal Contract between [redacted] or in any other supporting documents provided in support of the petition. In addition, Ms. [redacted] stressed that this "funding and process flow for [redacted] funding to [redacted] are subject to AUSTRAC oversight and reported accordingly to Australian regulators." However, the record does not contain evidence that either [redacted] report these claimed "intra-company funding" activities to regulators or any other authority in Vietnam.

Further, as noted above, the record does not contain documentary evidence demonstrating Mr. [redacted] handover of the VND 13,300,000,000 he purportedly collected from the Petitioner to [redacted] or any evidence that shows [redacted] direct involvement in the transaction, such as its bank statements or other financial records. On appeal, the Petitioner asserts that the Chief's decision "cites to no law or regulation that would require [redacted] to hold onto Petitioner's funds on account for a period of time or transfer those funds to Australia," noting that once she "passed the VND to the [redacted] representative in Vietnam" she "passed title to the VND cash to [redacted] The Petitioner explains that to assist her with her investment in the NCE, [redacted] agreed to remit an equivalent value in USD to Petitioner in exchange for the Petitioner's deposit of VND with the [redacted] representative." The Petitioner maintains that "ownership of the subject VND capital passed to [redacted] at the same time that ownership of the USD passed to Petitioner." As such, she asserts that the deposit of the VND into a third party's account has no bearing on this petition, and "it is a mistake of law for USCIS to require bank statements of [redacted] for approval of Petitioner's case."

This explanation suggests the Petitioner entered an agreement with [redacted] that included provisions regarding her transfer of ownership of her VND funds to [redacted] and her acquisition of ownership of equivalent USD funds associated with the currency swap and foreign exchange. However, the record does not contain evidence of any contract or agreement between the Petitioner and [redacted] that would corroborate the statements in the record. Further, as already discussed, the submitted Principal Contract between [redacted] does not indicate that [redacted] agreed to accept VND from Vietnamese clients on behalf of [redacted] or otherwise agreed to assist [redacted] with currency swap transactions of the type described.

The record contains an "Advisory Letter," from an attorney located in Vietnam, who offers his opinion regarding "transactions among [redacted] and Investor." He asserts that if an investor "gives currency in the territory of Vietnam and receives USD through bank account abroad" these transactions "shall not violate the Vietnamese Commercial Law, Law on Prevention of Money Laundering, and the Criminal Code."

This advisory opinion, however, does not overcome the concerns we have raised above based on the record. The Petitioner did not adequately document the agreement she had with [redacted] and/or [redacted] setting forth the terms of the currency swap transaction, nor does the record corroborate Mr. [redacted] receipt of her VND 13,300,000,000 in cash, and [redacted] receipt of the funds she purportedly transferred to Mr. [redacted] In fact, as noted above, the Petitioner's initial submission did not identify [redacted] role in the transaction. The record demonstrates that the Petitioner withdrew VND 13,300,000,000 from her [redacted] account, but it does not contain sufficient evidence tracing these funds to the $555,000 transferred from Australia to the NCE's designated escrow account. Further, while a statement from [redacted] director indicates that [redacted] have an arrangement whereby [redacted] facilitates currency exchanges and remittances outside of Vietnam and [redacted] "nets off" these exchanges as "intracompany funding," the Principal Contract between the two entities does not corroborate the existence of this arrangement.

The Petitioner claims on appeal that USCIS has allowed intermediaries to assist investors in bringing funds to the United States for investment purposes and that the Chief should have deferred to this policy. However, the issues in this case are not limited to the Petitioner's alleged reliance on intermediaries, such as [redacted] to assist her in exchanging VND to USD and in remitting funds from Vietnam to the United States. Rather, as we have explained above, at issue is that the Petitioner has not sufficiently documented the complete path of the investment funds, from the real estate sales proceeds she received in Vietnam to the funds [redacted] sent to the NCE's escrow account on her behalf through [redacted] *See Borushevskyi v. USCIS*, 664 F. Supp. 3d at 129, *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Without additional corroboration, the Petitioner has not demonstrated the lawful source of her purported EB-5 investment. *See* 8 C.F.R. § 204.6(j)(3), (e). Further, in all cases, USCIS conducts "a de novo review of each prospective immigrant investor's lawful source of funds and other individualized eligibility criteria," which is what we have done in this case. *See generally*, 6 *USCIS Policy Manual* G.6, https://www.uscis.gov/policy-manual.

For the reasons we have discussed, we conclude the Petitioner has not established, by a preponderance of the evidence, her eligibility for the classification. Specifically, the Petitioner has not presented sufficient evidence tracing the path of the funds that [redacted] remitted to the NCE on her behalf to a lawful source. *See* 8 C.F.R. § 204.6(e), (j)(3); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. She has therefore not established by a preponderance of the evidence the lawful source of the funds she claims to have invested in the NCE.

III. CONCLUSION

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 met this burden. Accordingly, the appeal will be dismissed for the above-stated reasons.

ORDER: The appeal is dismissed.