U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17908381

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) (2016).[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 remitted to [redacted] (the NCE), which is affiliated with [redacted] a U.S. Citizenship and Immigration Services (USCIS) designated regional center.[2] 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 (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii) (2016).

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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 2016, 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) (2016).

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.[3] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

The Petitioner claims to have invested at least $500,000 in the NCE.[4] According to its business plan, the NCE seeks to raise up to $350,000,000 from immigrant investors and lend them to [redacted] which is owned by several affiliated companies, including [redacted] the job-creating entity (JCE). The JCE will use the funds to finance the construction and re-development of an existing hotel in [redacted] a project that will also include the renovation of an historic theatre in [redacted] 10 floors of new retail space, and additional new construction.

The Petitioner asserted that she obtained her investment funds from the proceeds of her spouse's sale of his shares in [redacted], with the balance derived from her spouse's accumulated after-tax salary income earned with this company between January 2015 and August 2016. The Petitioner stated that she exchanged her investment funds from Chinese Renminbi (RMB) to U.S. dollars through a friend, [redacted]

The records show that in June 2016, the company that purchased her spouse's stock in [redacted] transferred RMB 3,530,788 to his [redacted] account. The record further indicates that from January 2015 to August 2016, the Petitioner's spouse received RMB 523,030 in salary payments from [redacted] in this same account. In August 2016, the Petitioner's spouse transferred RMB 3,700,000 to Mr. [redacted] account. In exchange, Mr. [redacted] transferred $555,000 from his [redacted] account to the Petitioner's [redacted] account. Subsequently, the Petitioner wired $552,050 from her [redacted] account to the [redacted] account designated by the NCE's escrow agent.[5]

The Chief concluded that the Petitioner did not establish, by a preponderance of the evidence, that her investment funds were lawfully obtained. Specifically, the Chief determined the Petitioner did not

[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 indicated 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) (2016).

[5] This amount included a $52,000 administrative fee.

sufficiently document the source of the U.S. dollar (USD) funds transferred to her from Mr. [redacted] account. The Chief acknowledged evidence, submitted in response to a request for evidence (RFE), showing that Mr. [redacted] received a transfer of $2,000,000 to [redacted] from [redacted], a British Virgin Islands company in which he is a claimed shareholder, on the same day he transferred $550,000 to the Petitioner's [redacted] account. However, the Chief emphasized that the evidence did not establish the lawful source of funds that originated from [redacted] and ultimately became part of her EB-5 investment.

On appeal, the Petitioner contends that the Chief reached an erroneous conclusion of law and maintains she met her burden to demonstrate, by a preponderance of the evidence, her eligibility for EB-5 classification. She also emphasizes that the Chief did not issue a notice of intent to deny (NOID) prior to denying the petition and therefore did not allow her to submit additional documentation addressing [redacted] lawful business income. She asserts that Mr. [redacted] has provided her with additional documentation addressing this issue and requests review of this new evidence.

Upon de novo review, and after considering the evidence submitted on appeal, we conclude the record does not establish by a preponderance of the evidence that the Petitioner's investment funds were lawfully obtained for the reasons we will discuss below.

As the Chief emphasized, because the Petitioner's funds were routed through a third-party exchanger, and there is insufficient documentation to demonstrate the legitimacy of the exchanger and the funds in his [redacted] bank account in Hong Kong,[6] the Petitioner bears the burden of demonstrating that the funds the exchanger transferred to her [redacted] account were obtained through lawful means. Here, the Petitioner has not met this burden.

In the RFE, the Chief requested documentation to establish the source of funds used by Mr. [redacted] for the currency exchange. The Chief noted that such evidence may include, but is not limited to, evidence documenting wage and salary payments, other income from business activities, interest, dividend and bonus income, or any sources of income, and the accrual and maintenance of the funds in his [redacted] Hong Kong account.

In response, the Petitioner stated that "[a]ccording to Mr. [redacted] his USD fund was his legal income earned from [redacted] The Petitioner provided: a copy of Mr. [redacted] Hong Kong Identity Card; a "Certificate of Incumbency" for [redacted] prepared in July 2016 by [redacted] its claimed registered agent; [redacted] redacted Cash Activity Statement Detail for the period ending August 31, 2016, which shows a $2,000,000 wire transfer from its USD account to Mr. [redacted] Hong Kong account on August 10, 2016; and a redacted August 2016 consolidated monthly statement for Mr. [redacted] Wealth Management Account, which shows a $2,000,000 deposit in his USD foreign currency savings account on August 10, 2016 and an outward remittance of $555,000 from this account on the same date.[7]

[6] The Petitioner did not claim that the third-party exchanger is a licensed or registered money services business.
[7] This evidence shows that when Mr. [redacted] received the $2,000,000 from [redacted] he had $1,715.43 in this USD savings account.

The Petitioner explained that Mr. [redacted] told her that it is "not convenient to provide more information about [redacted] due to his personal privacy concerns, and that he was similarly unwilling to provide any additional documentation regarding the flow of funds in his [redacted] account beyond the transactions relevant to the currency exchange transaction.

The Certificate of Incumbency provides an address for [redacted] claimed registered office in British Virgin Islands, states that the company is in good legal standing, and identifies Mr. [redacted] as its co-founder, director and 50 percent shareholder as of July 2016. However, it was not accompanied by independent evidence confirming that [redacted] is in fact the registered agent for [redacted] or other supporting documentation corroborating [redacted] s ownership and company registration in the British Virgin Islands.

The bank records submitted in response to the RFE verify [redacted] transfer of $2,000,000 to Mr. [redacted] account, the same account he used to transfer $550,000 to the Petitioner's [redacted] account. However, the evidence did not establish the purpose of this funds transfer from [redacted] to Mr. [redacted] and the Petitioner, in her statement, described it only as "income" earned by him. The record does not contain, for example, evidence showing whether or how Mr. [redacted] reported this payment on any tax documentation or evidence that he had a regular or guaranteed income from this company based on his claimed position as a director and shareholder, either through an employment contract, the company's operating agreement, or other instrument.

Further, as emphasized by the Chief, the Petitioner did not provide evidence that the $2,000,000 [redacted] transferred to Mr. [redacted] account, which was then transferred to the Petitioner's account for purposes of remitting her EB-5 investment, was derived from the company's lawful business operations and deposited and maintained in the company's [redacted] USD account. The Chief noted that the Petitioner did not provide evidence such as [redacted] tax returns, independent audit reports and detailed bank statements to demonstrate an accumulation of USD funds from its business operations in this account. The record also lacks any description of the nature of [redacted] business activities. The Petitioner emphasized in her RFE response that Mr. [redacted] was unwilling to provide any additional documentation about [redacted] or his personal finances. While we acknowledge the Petitioner's difficulties in obtaining the requested evidence from a third-party exchanger, in visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966).

Based on the evidence submitted at the time of filing and in response to the RFE, it appears that the Petitioner's RMB 3,700,000 sent to Mr. [redacted] account never left mainland China. The Petitioner claimed that Mr. [redacted] obtained the exchange funds in USD through his income from [redacted] and documented this company's transfer of $2,000,000 to his [redacted] account. However, the submitted documents do not establish that the $2,000,000 transferred to Mr. [redacted] USD account derived from the company's lawful business operations. Therefore, we agree with the Chief's determination that the source of funds in Mr. [redacted] Hong Kong account was not sufficiently demonstrated based on the evidence provided at the time of filing and in response to the RFE.

On appeal, the Petitioner asserts that the Chief "did not issue a Notice of Intent to Deny ("NOID") prior to the issuance of the denial decision and therefore, did not allow the Petitioner to submit additional documentation addressing [redacted] lawful business income raised in the Denial Decision."

The Petitioner has not shown that the Chief erred. USCIS is not required to issue an RFE or NOID and has discretionary authority to deny a petition for lack of initial evidence or ineligibility without issuing an RFE or a NOID. *See* 8 C.F.R. § 103.2(b)(8)(ii), (iii). However, because the initial evidence did not include any reference to [redacted] or identify this entity as the source of the USD funds Mr. [redacted] transferred to the Petitioner for use as her EB-5 investment in the NCE, the RFE did not put her on notice that the record should include evidence such as [redacted] "tax returns, independent audit reports and detailed bank statements" to demonstrate an accumulation of USD funds in its [redacted] account, as stated in the Chief's decision. Accordingly, we will consider the evidence offered for the first time on appeal, which includes a signed declaration from the Petitioner, and supplementary evidence.

The Petitioner states that [redacted] as an offshore company incorporated in British Virgin Islands, "has no regulatory requirements to prepare or file financial accounts and no auditing requirements." In support of this claim, she submits articles titled [redacted] from *360 Encyclopedia* (www.baike.so.com) and "Taxation in the British Virgin Islands" from *Wikipedia*. As noted, the Chief observed that the Petitioner did not submit, for example, copies of [redacted] tax returns, independent audit reports and detailed bank statements to demonstrate an accumulation of USD funds from its business operations in its [redacted] account prior to its transfer of $2,000,000 to Mr. [redacted] While we acknowledge the Petitioner's assertions regarding formal financial reporting and auditing requirements in British Virgin Islands, she has not explained why evidence such as bank statements or other types of financial documentation showing [redacted] accumulation of income from business operations would be unavailable. 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).

The Petitioner also asserts that "the initial funding" of [redacted] occurred in 2013.[8] Her declaration includes an embedded image from [redacted] statement for the period ended December 31, 2013, showing "year to date deposits and withdrawals." The statement shows a $20,000,000 cash deposit in January 2013, a $5,000,000 cash deposit in June 2013, and a total of $27,500,000 in withdrawals, which appear to be transfers to other accounts owned by the company. Counsel's appellate brief states that the $20,000,000 deposit is "the source of the U.S. Dollars transferred to the Exchanger." Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). The record does not establish the lawful source of the deposits made in the company's [redacted] account in 2013 or the maintenance of these funds in the account through the date of the $2,000,000 transfer to Mr. [redacted] in 2016.

[8] The previously submitted "Certificate of Incumbency" for [redacted] indicates the company was incorporated in British Virgin Islands in [redacted] 2009.

The Petitioner states that Mr. [redacted] has asked [redacted] to retrieve bank records related to [redacted] initial funding in 2013, but notes that Hong Kong's Inland Revenue Ordinance does not require such records to be maintain beyond seven years.[9] However, we note that this evidence alone would be insufficient to demonstrate that the claimed $20,000,000 initial investment in [redacted] was the source of the $2,000,000 transfer to Mr. [redacted] that occurred in 2016, as the record does not show that these funds were maintained in the company's account, nor does it show the purpose of the $2,000,000 withdrawal.

The Petitioner emphasizes that Mr. [redacted] has a long-standing banking relationship with [redacted] and states that the bank follows "stringent client onboarding compliance requirements with comprehensive anti-money laundering policies and processes in place." While we do not doubt that [redacted] has such policies and practices in place, the Petitioner cannot meet her burden to establish the lawful source of the funds used for investment in the NCE by relying on [redacted] reputation or its client vetting processes. 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.

Finally, the Petitioner states that Mr. [redacted] is a "family member of substantial shareholder family of a Hong Kong Listed company" with "proved source of wealth." She submits a partial copy of a "Global Offering" prospectus for [redacted] a Chinese joint stock company with registered capital of RMB 1,045 million, issued in connection with its Hong Kong Public Offering. The prospectus describes the company's history, business activities, and ownership structure and indicates that Mr. [redacted] ultimately owns a 20% interest through other family-owned businesses. However, this evidence does not assist in establishing the source of the $2,000,000 transferred by [redacted] to Mr. [redacted] account. Other evidence intended to demonstrate Mr. [redacted] source of wealth cannot substitute for evidence tracing that $2,000,000 funds transfer back to a lawful source. Because a portion of this $2,000,000 deposit was sent to the Petitioner to be used as her capital investment in the NCE, she did not meet her burden to show that her invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e).

Therefore, for the reasons discussed, the record remains insufficient to establish by a preponderance of the evidence the claimed lawful sources of the funds invested by the Petitioner in the NCE.

III. CONCLUSION

Because the record did not establish by a preponderance of the evidence that the funds invested by the Petitioner in the NCE were lawfully obtained, we conclude the Petitioner has not established her eligibility for the immigrant investor visa classification.

ORDER: The appeal is dismissed.

[9] The evidence on appeal includes an information pamphlet titled "A Guide to Keeping Business Records" published by Hong Kong's Inland Revenue Department.