U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31318312

Date: DEC. 18, 2024

Appeal of 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) (2019).[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 Investor Program Office denied the petition concluding that the record did not establish that the capital, which has been invested by the Petitioner or which the Petitioner is actively in the process of investing, was or is capital obtained through lawful means. The matter is now before us on appeal. 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) (2019).

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),

[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 (TEA) 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 in June 2017, the relevant law then in existence governs this appellate adjudication.

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

II. ANALYSIS

The Petitioner indicated on page 6 of his petition that on June 8, 2017, he invested $500,000[3] in [redacted] the new commercial enterprise (NCE), which is sponsored by [redacted] pursuant to the Immigrant Investor Pilot Program. The NCE proposes to pool up to $10,000,000 from 20 immigrant investors in order to fund development of an upscale mixed use retail center in [redacted] California.

The Petitioner asserted that he derived his investment funds through the proceeds of the sale of property in [redacted] Vietnam totaling 12,950,000,000 Vietnamese dong (VND). The Petitioner further asserted that he forwarded the investment funds to [redacted], doing business as [redacted] an Australian company operating in Vietnam to facilitate international money transfers. He stated that [redacted] in Vietnam collected his investments and [redacted] in Australia "transferred $550,025 to the Project Escrow Account on June 5, 2017."

In an attempt to document the source and path of his investment funds, the Petitioner submitted a personal statement with a source of funds chart, accompanied by property records, bank records, and receipts. The record shows that the Petitioner and his spouse built a home using funds derived from their income. On May 17, 2017, the Petitioner entered into a contract for the sale of his home for 12,950,000,000 VND. On May 18, 2017, the buyer of the property deposited 12,950,000,000 VND into the Petitioner's personal account with [redacted] On June 5, 2017, the Petitioner withdrew 12,532,320,000 VND from his [redacted] account. On June 6, 2017, the Petitioner withdrew 250,646,000 VND from the same [redacted] account. The total amounts withdrawn were 12,782,966,000 VND.

A letter dated June 5, 2017, from [redacted] states that a representative of [redacted] "collected 12,532,320,000 (the equivalent of USD 550,025.00) from [the Petitioner] … The USD 550,025.00 was transferred by [redacted] in Australia to the account nominated by [the Petitioner] in the United States of America."

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[2] 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).

[3] The Petitioner filed his petition in 2017 and indicated on the petition that the project is located in a TEA. Therefore, the requisite amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2015).

A transaction receipt from [redacted] lists the Petitioner as "Sender" of 740,681.65 Australian Dollars (equivalent to $550,025) to the "Receiver," the NCE, [redacted] on June 5, 2017. A tax invoice from [redacted] lists the Petitioner as "Beneficiary" and "Remitter" for the "amount received" of 12,782,966,000 VND (755,494.45 Australian Dollars) on June 5, 2017. Additionally, the record includes a letter dated June 8, 2017, from [redacted] designated escrow agent, confirming receipt of the Petitioner's investment funds of $550,000.

In a request for evidence (RFE) dated June 29, 2023, the Chief requested additional evidence to demonstrate that the Petitioner's invested capital was obtained through lawful means and to document the path of the investment funds. In response, the Petitioner provided a statement for [redacted] account. All transactions on the statement are redacted except one dated June 7, 2017, reflecting a starting balance of $550,680.46, a debit of $550,025.00 with the description "TT to [redacted] and an end balance of $655.46. The Petitioner provided two letters (dated March 14, 2023, and March 19, 2021) and an unsworn statement (dated March 19, 2021) from [redacted] Director of [redacted] Both letters and the statement are dated before the RFE was issued on June 29, 2023.

In her letters and unsworn statement, Ms. [redacted] describes [redacted] process of transferring funds from Vietnam to Australia and the United States. She states that [redacted] uses a service provider in Vietnam identified as [redacted] She explains that [redacted] representatives collect cash funds from individuals in Vietnam and [redacted] "transfers the value of the transaction in [U.S. dollars] to the beneficiary in the United States of America." Ms. [redacted] further explains, "Funds for these payouts come from funds sent from [redacted] to [redacted] bank account in Vietnam and funds provided as intra-company funding from clients who wish to send funds from Vietnam to the United States via Australia."

To support Ms. [redacted] explanation the Petitioner submitted copies of contracts between [redacted] and [redacted], dated 2009 and renewed in 2011, as well as [redacted] license "for providing service of foreign currency receipt and payment," dated 2011. The contracts between [redacted] describes the payment process as follows:

a. Customers in need of transferring cash into Vietnam shall contact [redacted]
b. [redacted] shall transfer the original amount and fee to [redacted] Bank in Vietnam and transfer the detailed list in full and beneficiary's information … and payment in VND or foreign currency – transfer may be carried out by email, fax or telegram, etc.
c. [redacted] Bank shall notice [redacted] to confirm the amount [redacted] has transferred to [redacted]
d. [redacted] shall quickly contact beneficiaries via phone or notice mail and when receiving money, beneficiaries must sign for confirmation.
e. [redacted] shall report to [redacted] via email or fax to notice payment results or events of payment impossible to make (due to wrong information of beneficiaries or other reasons out of force majeure, etc.).
f. The two parties undertake to strictly perform the regulations on foreign currency management of Vietnam's law.

The Petitioner also provided a legal opinion dated July 22, 2021, also before the date the RFE was issued in 2023. The opinion, provided by an attorney in Vietnam, concludes that "the money transfer within the territory of Vietnam from the Vietnamese Investor to the authorized personnel of [redacted] is legal under the law of Vietnam." The legal opinion does not identify what specific documents were examined in providing this legal advice. Nor does the opinion describe or document the specific transaction between the Petitioner and [redacted] or [redacted] Further, the legal opinion does not describe or advise on the process of transferring [redacted] funds from Australia to Vietnam or to the United States.

The Chief determined that the record was not sufficient to show the transfer of funds from the Petitioner to [redacted] from [redacted] or from [redacted] for [redacted] The Chief noted that the Petitioner did not identify [redacted] as a party to the money transfer in the initial filing but did so for the first time in the RFE response. The Chief also noted that the record did not contain evidence that [redacted] was a licensed money transfer business authorized to receive local currency in Vietnam, as the license was for "foreign currency receipt and payment." Nor did the record include "invoices, remittance receipts, transfer documents, complete or partial bank account records, bank slips, identifying bank information (name and/or account numbers), identifying exchanger information (name, passport, position, title, etc.) or any other sufficient documentation linking [redacted] to Petitioner's currency exchange in any capacity." Additionally, the contracts between [redacted] as well as the legal opinion, describe the process of receiving funds in Vietnam, rather than transferring funds out of the country. The Chief concluded that the Petitioner had not established by a preponderance of the evidence that his investment funds were lawfully obtained.

On appeal, the Petitioner contends that the Chief erred in requiring evidence that the Petitioner's foreign currency transfer complies with Vietnamese and Australian legal requirements. The Petitioner asserts that the Chief did not give due consideration to the legal opinion provided in the RFE response. In addition to evidence already in the record, the Petitioner submits a personal statement describing [redacted] money transfer process and the steps he took to transfer his investment funds. The Petitioner also submits the following new evidence on appeal:

- A confirmation letter from [redacted] representative and employee of [redacted] confirming his receipt of VND 12,532,320,000 from the Petitioner.
- A contract dated February 1, 2017, between [redacted] "to receive remittance lists, Vietnamese currency, and foreign currency from [redacted] for making door-to-door payment to customers and domestic beneficiaries."
- A letter dated November 1, 2023 from [redacted] confirming that [redacted] representative and employee of [redacted] collected the Petitioner's VND 12,532,320,000 on June 5, 2017.

The Petitioner asserts on appeal that he previously provided evidence that exceeds the preponderance of the evidence standard. However, upon de novo review, 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.

A petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

The submitted documents do not establish the complete path of the Petitioner's investment funds. To show that the invested funds were obtained through lawful means, a petitioner must produce evidentiary documents listed at 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 and the record must trace the complete path of the funds back to a lawful source. *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).

The Petitioner asserts that his funds were routed through third-party exchangers, first to [redacted] and then to [redacted] There is insufficient documentation to demonstrate the legitimacy of the funds that ultimately reached the [redacted] bank account. The record does not include [redacted] bank records or other evidence of any funds sent from [redacted] to support the transfer of funds as explained by the Petitioner and by [redacted] Neither the letters from Ms. [redacted] nor her statement specifically describe or document the actual transaction between the Petitioner and [redacted] or [redacted] The statement from [redacted] is not supported by bank or other financial records. Further, the letter dated November 1, 2023 from [redacted] confirming that [redacted] collected the Petitioner's investment funds in 2017, was not issued contemporaneously with the events it claims to document and is insufficient to establish the lawful source of the Petitioner's investment funds.

Here, the [redacted] statement reflects a withdrawal of VND 12,532,320,000 from the Petitioner's account. In the Petitioner's statement on appeal, he states that he "handed over cash worth VND 12,532,320,000 … After [redacted] representative completing [sic] the counting, [redacted] emailed me a receipt and anti-money laundering declaration documents." However, the Petitioner's statement is not supported by independent, objective evidence. For example, the record does not include evidence documenting the transfer of cash, such as a receipt from [redacted]

We acknowledge the Petitioner's claims that the Chief's decision does not comply with the applicable laws and regulations. However, contrary to the Petitioner's claims, pertinent regulations and precedent decision support the Chief's request for evidence regarding the claimed lawful sources of the exchange funds used by the third-party exchanger for the currency exchange. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210.

In the present case, the record reflects that the Petitioner's funds withdrawn from his [redacted] account in Vietnam have never left Vietnam. The record does not include evidence of any funds exchanged between [redacted] Nor does the record include evidence of funds exchanged

between [redacted]. There are breaks in the paths of the Petitioner's investment funds. The plain language of 8 C.F.R. §§ 204.6(e) and 204.6(j)(3) supports the Chief's requirement that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds. *See Truong v. USCIS*, No. 21-316, 2023 WL 4232658, at 5 (D.D.C. June 28, 2023). The relevant path includes tracing the funds from their point of origin though *any intermediary accounts*. *See id.* at *6.* (emphasis added).

Because the record did not establish the complete paths of the Petitioner's funds from Vietnam to the United States, the Petitioner must demonstrate by a preponderance of the evidence that the funds occurring after the breaks in the paths derived from lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210; *see also Borushevskyi v. USCIS*, 664 F. Supp. 3d 117 at 129. The record does not sufficiently demonstrate that the funds ultimately received by [redacted] derived from lawful sources as explained above. Therefore, 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

It is the Petitioner's burden to demonstrate his eligibility for the EB-5 classification, which includes establishing the lawful source of his purported EB-5 investment. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. 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 is ineligible for the immigrant investor visa classification.

ORDER: The appeal is dismissed.