U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29506932

Date: DEC. 19, 2024

Appeal of Immigrant Investor Program Office Decision

Form I-526, Immigrant Petition by Regional Center Investor

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).[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. A noncitizen may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

The Chief of the Immigrant Investor Program Office (the Chief) denied the petition, concluding that the record did not establish the lawful source of the funds transferred into the NCE's bank account and that those funds were owned by the Petitioner. 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) (2018).

[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act (RIA), 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 their petition prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

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, they must show that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). 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.[2] *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

The Petitioner asserts that she invested $500,000[3] into [redacted] (the NCE), which is associated with [redacted] (Regional Center). The NCE proposed to pool $50 million from up to 100 immigrant investors and lend this amount to [redacted], which would then make a mirror loan to the job-creating entity (JCE), [redacted]. The project involves the construction and operation of a mixed-use tower and an office tower in [redacted] and the funds will be used to repay bridge financing.

The Petitioner states that her funds derive from the sale of two real estate properties in Vietnam and submitted documentation of the transfer of VND 12.8 billion related to this sale into her [redacted] account. In order to transfer her investment funds from Vietnam to the NCE in the United States, the Petitioner withdrew VND 12.8 billion from this account and initially asserted that on the same day she transferred this money to [redacted], a licensed currency exchange company in Australia doing business as [redacted]. Initial evidence included a letter from the Director of [redacted] stating that the company collected the Petitioner's VND funds, and that it then transferred $540,025 to the bank account of [redacted]. Other evidence initially documenting this transfer included documents from [redacted] titled "Tax Invoice" and "Transaction [redacted]. The tax invoice document indicates that the Petitioner remitted VND 12.8 billion to [redacted] which had the value of AUD 718,294. The transaction document lists the Petitioner as the sender and the NCE's escrow account as receiver of $540,025.

When responding to the Chief's request for evidence (RFE), the Petitioner submitted two additional letters from [redacted] which contradict the initial evidence of how the Petitioner's funds were received and transferred. These letters indicate that the company engaged a Vietnamese company, [redacted] to act as its representative in Vietnam and collect funds

[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 indicates that the NCE is in a targeted employment area, and that the required amount of qualifying capital is adjusted from $1,000,000 to $500,000. 8 C.F.R. 204.6(f)(2).

from individuals like the Petitioner in Vietnam seeking to transfer those funds to Australia and ultimately to the United States. To document the claimed collection of her funds by [redacted] the Petitioner submitted a copy of the identity card of the individual (N-T-C-) she asserts received her funds, as well as contracts between N-T-C- and [redacted] and between [redacted] regarding money transfers. She also submitted a copy of an email dated March 29, 2018, which appears to be from [redacted] to an individual named [redacted] stating that N-T-C- will arrive at the same address in Vietnam used by the Petitioner on Form I-526 to collect VND 12.8 billion, equivalent to $540,025. But the email makes no mention of the Petitioner. And in contrast to the initial letter and documents from [redacted] which indicated a direct transfer from the Petitioner to [redacted] this new evidence introduced [redacted] as an intermediary in the transaction. In addition, the Petitioner stated in her RFE response that her funds never left Vietnam, which appears to be inconsistent with the tax invoice and transaction documents naming her as the sender of funds deposited into the NCE's escrow account. It is the Petitioner's burden to 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).

In discussing this evidence in her decision, the Chief noted that there was no evidence in the record to explain who [redacted] is or what her role was in this transaction. Accordingly, the Chief concluded that this evidence did not establish that N-T-C- actually received the Petitioner's funds. The Chief also determined, based upon gaps in the path of the funds, that the Petitioner had not established that the funds ultimately transferred to the NCE's escrow account derived from a lawful source.

On appeal, the Petitioner submits a new statement (together with other previously submitted evidence) from V-M-V-N-, who states that she is an investment consultant, that the Petitioner is her client, and that she is the [redacted] from the email. She adds that she personally witnessed the collection by N-T-C- of the Petitioner's VND 12.8 billion. But this statement from a claimed witness to the transaction is insufficient to document this transfer of funds and is not supported by documentary evidence such as [redacted] bank statements, a receipt or other documentation from [redacted] or even a statement from N-T-C- or an official of [redacted] regarding the asserted transaction. Also, the previously noted transaction document from [redacted] referred to as a "receipt document" by the Petitioner on appeal, makes no mention of [redacted]

In addition to the conflicting evidence of who received the Petitioner's funds and the lack of evidence of that receipt, the evidence also does not show what N-T-C- did with the funds if he was the receiver. One of the letters from [redacted] submitted with the RFE response explains the general money transfer process and states that its representative in Vietnam is responsible for providing the funds collected to [redacted] but as noted above, there is no documentary evidence of such a transaction involving the Petitioner's funds. This letter also states that within 30 minutes of the representative in Vietnam receiving the funds, they send an updated "EAP 11" form to show the VND amount received and the AUD equivalent. But the document included in the file is an unsigned form which does not mention N-T-C- or any other person who received funds. It also does not document the receipt of any funds, as claimed by the Petitioner, because the only completed line on the form listing an amount of funds is labelled "amount booked."

Regarding whether the Petitioner's funds left Vietnam or were exchanged in a swap agreement, this letter from [redacted] further states that the funds collected by [redacted] serve as "intracompany funding

from [redacted] But the provided contract between [redacted] describes the nature of their agreed transactions differently, expressly limiting them to money transfers to customers in Vietnam. There is no indication that [redacted] would be responsible for outbound money transfers from Vietnam, and no indication of the "intra-company funding" described in [redacted] letter. In addition, the "collaboration contract" between N-T-C- and [redacted] appears consistent with the contract between [redacted]. It states that N-T-C-'s responsibility 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." It does not indicate that his duties included collecting money from customers in Vietnam for outbound transfers. Therefore, neither of these contracts support the intracompany funding scenario described in the letter from [redacted] or the Petitioner's claims regarding the path of her funds from her alleged delivery of VND 12.8 billion to N-T-C- to the deposit of $540,025 into the NCE's escrow account.

Per the preceding analysis, the Petitioner has not sufficiently documented the complete path of her investment funds. *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). Accordingly, she has not established eligibility for the EB-5 classification, and the appeal will be dismissed.

ORDER: The appeal is dismissed.