U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29710648

Date: DEC. 19, 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 March 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 26, 2019, 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 $20,000,000 from 40 immigrant investors in order to fund several initiatives in mining and environmental improvement activities in southeast Florida.

The Petitioner asserted that he derived his investment funds through a gift of 14,000,000,000 Vietnamese dong (VND) obtained from his father's sale of property in [redacted] Vietnam. The Petitioner further asserted that he forwarded the investment funds to the director of [redacted] a Vietnamese company working exclusively with [redacted] He stated that the director of [redacted], Ms. [redacted] then wired the investment funds "to the account of my designated currency transfer agency in Vietnam."

In an attempt to document the source and path of his investment funds, the Petitioner submitted a personal statement accompanied by property records, bank records, and receipts. The record shows that on July 19, 2019, the Petitioner's father's gift of VND 14,000,000,000 was deposited into the Petitioner's [redacted] account. A payment order demonstrates that the Petitioner transferred VND 13,367,167,500 to Ms. [redacted] account on July 19, 2019. The Petitioner also submitted two receipts issued by [redacted] stating that he made two payments to the company on July 19, 2019 – one payment of VND 11,650,000,000 and a second payment of VND 1,165,000,000. Additionally, the record includes a [redacted] bank transaction statement for [redacted] reflecting receipt of a wire transfer on July 19, 2019, for $500,050 from [redacted] account holder [redacted]

In a request for evidence (RFE) and again in a notice of intent to deny (NOID), the Chief requested additional evidence to demonstrate that the Petitioner's invested capital was obtained through lawful

[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 2019 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).

means and to document the path of the investment funds. The Petitioner provided a chart to illustrate the path of his investment funds. He asserted that he transferred the funds to Ms. [redacted] and that she then transferred the funds to [redacted], a "Licensed Vietnamese Money Transfer Agent." He further asserted that [redacted] transferred the funds to [redacted], a "Third Party Transfer Company." Finally, [redacted] transferred the funds in U.S. dollars to [redacted]

To support this claim, in response to the RFE the Petitioner submitted Ms. [redacted] bank statement and evidence of her role as director of [redacted]. He also submitted a certificate of registration listing [redacted] as a registered foreign currency exchange agent as of May 28, 2018. Additionally, he submitted a "Due Diligence Report" prepared by [redacted] providing information on [redacted] the purported third-party transfer company.

The [redacted] bank statement demonstrates that on July 19, 2019, the Petitioner transferred VND 13,367,167,500 from his [redacted] account to Ms. [redacted] account. On the same date, Ms. [redacted] made two withdrawals from her [redacted] account – one in the amount of VND 1,016,000,000, and another in the amount of VND 12,351,635,625.

In response to the NOID, the Petitioner referenced Ms. [redacted] bank statement as evidence of "the Petitioner's funds entering [her] account and then being transferred out of her account to the Vietnamese currency exchange agent [redacted]. The Petitioner stated that he requested copies of bank statements from [redacted] and from [redacted] but was unable to obtain this evidence. In lieu of the bank statements, the Petitioner referenced the certificate of registration for foreign currency exchange agent of [redacted] and the Due Diligence Report on [redacted] as evidence that the money exchange was conducted through two legally registered businesses.

The Chief determined that the record was not sufficient to show the transfer of funds from Ms. [redacted] to [redacted] from [redacted] or from [redacted]. The Chief concluded that the Petitioner has not established by a preponderance of the evidence that his investment funds were lawfully obtained.

On appeal, the Petitioner contends that the Chief acted ultra vires in requiring that the Petitioner document that the funds exchanged with [redacted] and with [redacted] were lawfully obtained. Specifically, the Petitioner states that the regulations at 8 C.F.R. § 204.6(e) and (j)(3) only require documentation of "the EB-5 petitioner's acquisition of capital," and that there is no law or policy requiring a petitioner to "source the operations of a licensed, commercial money exchanger and a third-party company for which only the bank account was used." The Petitioner also states on appeal that the Chief violates the USCIS policy on deference to previously approved petitions, as USCIS has approved other petitions where [redacted] and a third-party company have served as money exchange agents.

The Petitioner claims 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 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 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).

Here, the [redacted] bank statement reflects one transfer of VND 13,367,167,500 from the Petitioner to Ms. [redacted] This is inconsistent with the two receipts from [redacted] for VND 11,650,000,000 and VND 1,165,000,000 (which total VND 12,815,000,000). The Petitioner does not explain why he was given two receipts on the same day when the funds were transferred in a single transaction. Further, he does not explain why the receipts document an amount that is VND 552,167,500 (approximately $20,000) less than what he actually transferred into Ms. [redacted] bank account.

Further, the withdrawal amounts from Ms. [redacted] account do not match, neither individually (VND 1,016,000,000 or VND 12,351,635,625) nor in combined total (VND 13,367,635,625), the Petitioner's deposit of VND 13,367,167,500. The Petitioner must resolve 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).

Additionally, the record does not include documentation of the purported transfers of funds from Ms. [redacted], or from [redacted] The certificate of registration for foreign currency exchange agent of [redacted] and the Due Diligence Report on [redacted] do not include details of the specific financial transactions between any of the parties. Further, the Due Diligence Report does not include the name of the requesting party or identify the purpose for which it was requested.

On appeal, the Petitioner does not offer new evidence to document the claimed lawful sources of funds from [redacted] or from [redacted] The Petitioner contends that he attempted to obtain the evidence requested by USCIS from [redacted] and from [redacted] However, the Petitioner does not support this claim with independent, objective evidence, such as communication with either entity at any time. While we acknowledge the Petitioner's difficulties in obtaining the requested evidence from the third-party exchangers, 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).

In a statement from Ms. [redacted] submitted on appeal, she states that she "withdrew the funds and took the cash to [redacted] representative." However, Ms. [redacted] 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] for the cash Ms. [redacted] states she took them.

We acknowledge the Petitioner's claims that the Chief's decision does not comply with the applicable laws and regulations and violates the USCIS deference policy. 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. Additionally, the Petitioner's reliance on the USCIS deference policy is misplaced. We are not required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988).

In the present case, the record reflects that the Petitioner's funds sent to Ms. [redacted] and withdrawn from her [redacted] account in Vietnam have never left Vietnam. 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.