U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28819089

Date: DEC. 20, 2024

Appeal of Immigrant Investor Program Office Decision

Form I-526, Immigrant Petition 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). 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 that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.[1]

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner did not establish that her funds invested into the new commercial enterprise (NCE), [redacted] (dba [redacted] was from lawful sources and that the NCE has created or will create at least ten full-time positions for qualifying employees. 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 petitioner must demonstrate that he or she has placed his or her 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 his [or her] own"). In addition, a petitioner must show that his or her 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

[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 his petition on April 6, 2018, the relevant law in existence on that date governs this appellate adjudication.

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. *Id.*

II. ANALYSIS

The Petitioner filed the instant petition on April 6, 2018. The Petitioner bases her eligibility on a $500,000 investment in the NCE which functions as a nature preschool in [redacted] The Petitioner stated that NCE "acquired the [redacted] Montessori, a previously operating preschool" on July 10, 2015, for $65,000. The Petitioner is the sole owner and president of the NCE and the Petitioner's sister, [redacted] signed the NCE's corporate bylaws as the secretary.

The Petitioner claimed that the sources of her investment funds are the following: 1) her sister [redacted] gift of $60,000 in 2015 originating from a home equity line of credit that [redacted] and her husband obtained in February 2006 on a previously purchased home; 2) [redacted] gift of $70,000 in 2017 originating from her accumulated employment earnings from 2012 to 2016; and 3) $370,000 in retained corporate earnings from her business, [redacted] in Macau. The Chief concluded that the Petitioner did not sufficiently establish that the gifts from [redacted] in 2015 and 2017 are from a lawful source.[2]

First, we will address the Petitioner's claim that the gift of $60,000 originated from her sister [redacted] home equity line of credit. The record contains [redacted] affidavit dated March 15, 2018, in which [redacted] stated that she obtained the home equity line of credit in the amount of $60,000 from [redacted] for a period of 10 years in February 2006 based on a property that she purchased with her husband. The Petitioner demonstrates the path of these funds by offering [redacted] account statements describing the availability of a $60,000 line of credit as of March 4, 2015, and two checks made out to the Petitioner in the amount of $59,000 and $1000 on March 17, 2015. The record also includes the NCE's bank statements ending in 5184 showing a deposit of $60,000 on the same day, March 17, 2015.

However, Chief concluded that the evidence did not corroborate the Petitioner's claim that $60,000 invested in NCE was a gift from [redacted] Despite that $60,000 was deposited to the NCE's account on March 17, 2015, the agreement showing that [redacted] "gifted funds to [redacted] on behalf of [the Petitioner] . . . from a home equity line of credit against [redacted], NJ" was dated more than two years later, on December 19, 2017. Here, the record lacks evidence contemporaneous with the deposit showing it was made on behalf of the Petitioner.

Additionally, the Chief noted that [redacted] income tax returns did not reflect the cash gift of $60,000 she made to the Petitioner. In response to the Chief's notice of intent to deny, the Petitioner submitted the Internal Revenue Service (IRS) Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, purportedly filed with the IRS contemporaneously with the gift. However, the evidence is insufficient to corroborate that [redacted] gifted $60,000 to the Petitioner as the gift form was stamped "DRAFT" and did not reliably demonstrate whether it was filed with the IRS.

[2] In the denial, the Chief did not address the Petitioner's claim that $370,000 of the investment funds come from [redacted] corporate earnings.

On appeal, the Petitioner does not address these deficiencies that the Chief raised in the denial. Instead, the Petitioner simply offers a letter from her sister's accountant attesting that the claimed gift form was actually filed. But such statement is not supported with material, relevant or probative evidence and the Petitioner has not provided filed copies of the IRS gift form. Attempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Therefore, we conclude that the Petitioner has not overcome the discrepancy found in the record regarding the gift of $60,000 and demonstrated that she is the owner of the invested fund of $60,000. The record shows that the invested funds still belonged to [redacted] not the Petitioner, based on the executed gift agreement between the Petitioner and [redacted] on December 19, 2017, which postdates the investment of $60,000 occurred on March 17, 2015. As such, the Petitioner has not established that she has placed her own capital at risk, i.e., that she is the legal owner of the invested capital. *See Matter of Ho*, 22 I&N Dec. at 213; *see also Matter of Soffici*, 22 I&N Dec. at 165.

Next, we will address the source of the funds for the claimed gift of $70,000 from her sister [redacted] accumulated employment earnings between 2012 to 2016. The Petitioner submitted a copy of a check in the amount of $70,000 from [redacted] account ending in 2839 and the Petitioner's [redacted] statements ending in 9131 showing a deposit of $70,000 on December 21, 2017. This same amount was deposited to the NCE's account on December 26, 2017. In addition, the Petitioner submitted [redacted] W-2 Wage and Tax Statements and bank statements showing that her employment earnings were regularly deposited into the [redacted] account ending in 2839.

However, such evidence does not sufficiently demonstrate that [redacted] retained $70,000 of her earnings for the purpose of gifting to the Petitioner in or around December 2017. While the record documents the transfer of $70,000 from [redacted] bank account to the Petitioner's, it does not establish that the funds transferred to the Petitioner derived from the salary deposits as there are unaccounted expenditures and credits in [redacted] bank statements. The record lacks corroborating evidence showing the accumulation and retention of funds from salary over the claimed period of time. As the Petitioner has not adequately established that the $70,000 gift was sourced in her sister's accumulated earnings between 2012 and 2016, we conclude that the Petitioner has not demonstrated the lawful source of her investment funds.

The Chief also denied the petition concluding that the Petitioner did not establish that the NCE created or will create at least 10 full-time positions for qualifying employees. The Petitioner has claimed that the NCE already created 11 full-time positions as projected by the business plan: an education director, an administrative coordinator, four head teachers, and five assistant teachers.[3] As we conclude the Petitioner has not sufficiently demonstrated that she is the legal owner of $60,000 invested in the NCE or that the investment of $70,000 was derived from a lawful source, we reserve our opinion and decline to address the Petitioner's appellate arguments on the issue of job creation.

[3] We note here that although the Petitioner claimed that the NCE created 11 jobs, she has not shown they are "new" positions created as a result of the Petitioner's investment. The record reflects that the NCE acquired a pre-existing preschool in 2015, but the Petitioner did not submit evidence regarding the employment level at the prior preschool. *See Matter of Soffici*, 22 I&N Dec. at 167 (concluding that the petitioner has not established that the NCE's claimed employment of 20 full-time workers "constitutes either the maintenance of the previous level of full-time employment or the addition of 10 new, full-time positions").

See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

Based on the reasons stated above, we conclude that the Petitioner has not established, by a preponderance of the evidence, her eligibility for the EB-5 classification. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.