U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32410086

Date: DEC. 20, 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). This fifth preference classification makes immigrant visas available to foreign nationals who invest the requisite amount of qualifying capital in a new commercial enterprise (NCE) that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees. Foreign nationals may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), section 610, as amended by section 575 of Pub. L. No. 114-113 (2015).

The Chief of the Immigrant 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, is capital obtained through lawful means. The matter is now before us on appeal. *See* 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief and additional evidence and maintains that he has established eligibility for the benefit sought.

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

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6(e). A petitioner must demonstrate by a preponderance of the evidence that the capital was their own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. 206, 210 (Assoc. Comm'r 1998). To show that the capital was their own, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the new commercial enterprise. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. 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.

II. ANALYSIS

The Petitioner's supporting evidence indicates that on July 22, 2016, the Petitioner deposited $552,030[1] into the escrow account of [redacted] (NCE), which is sponsored by [redacted][2] pursuant to the Immigrant Investor Pilot Program. According to the Confidential Offering Memorandum, dated 2016, the NCE proposes to raise $300,000,000 from 600 immigrant investors and make a mezzanine loan to [redacted] (Borrower) to finance the redevelopment of a hotel, a theater, and entertainment and retail space to be located at [redacted] New York.

The Petitioner asserted that he derived his investment funds through a gift of $559,658 from his mother, [redacted], who obtained a loan of 3,800,000 Chinese renminbi (RMB) from [redacted] secured by a real property in [redacted] China. The Petitioner further asserted that his mother purchased the property for RMB 1,669,799 in 2015 using his father, [redacted] accumulated employment income from [redacted] from 1998 to 2015. The Petitioner also asserted that he exchanged his investment funds from RMB to U.S. dollars through a third-party exchanger, [redacted]

The record shows that on June 21, 2016, the loan proceeds of RMB 3,800,000 were deposited into the Petitioner's mother's account. On July 5, 2016, the Petitioner's mother transferred RMB 3,800,000 from her [redacted] account to [redacted] account. In exchange, on July 6, 2016, Mr. [redacted] transferred $559,658 from his [redacted] Hong Kong account to the Petitioner's [redacted] account.

The Chief found the record did not contain sufficient evidence that the funds in Mr. [redacted] Hong Kong account derive from his asserted earnings and, therefore, determined the Petitioner has not demonstrated by a preponderance of the evidence that the investment funds derive from lawful means. On appeal, the Petitioner contends that in denying his petition, the Chief arbitrarily violated the principle of non-retroactivity. He argues that prior to 2017, USCIS had accepted the third-party money swap and approved all petitions, but USCIS began to require petitioners to provide the evidence proving the source of the third party's funds in 2017 and retroactively applied this new practice to petitions filed prior to 2017.

First, we are not required to approve 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

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[1] On March 15, 2022, President Joe Biden signed the EB-5 Reform and Integrity Act of 2022, which made significant amendments to the EB-5 program, including the designation of a targeted employment area (TEA) and the minimum investment amounts. *See s*ection 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner filed his petition in 2016 and indicated 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).

[2] [redacted] is a USCIS designated regional center to participate in the EB-5 program. *See* 8 C.F.R. § 204.6(e) (defining "regional center").

I&N Dec. 593, 597 (Comm'r 1988). Second, as the Chief stated in her decision, because the Petitioner's funds were routed through a third-party exchanger [redacted], and there is insufficient documentation to demonstrate the legitimacy of the exchanger[3] and the funds in the exchanger's bank account in Hong Kong, the Petitioner bears the burden of demonstrating that the funds transferred to the Petitioner's [redacted] account were obtained through lawful means. *See* 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. Here, the Petitioner has not met this burden for the reasons we will discuss below.

The Petitioner has not presented sufficient evidence to show that the U.S. dollars in Mr. [redacted] Hong Kong account derived from his employment income in Hong Kong. In a request for evidence (RFE), the Chief requested for evidence to support claims of the lawful source and claims of the path of how funds arrived in Mr. [redacted] Hong Kong account. In response to the RFE, the Petitioner asserted that the U.S. dollars in Mr. [redacted] Hong Kong account derived from his legal working income in Hong Kong. To support this claim, the Petitioner provided Mr. [redacted] Hong Kong permanent resident card, a business card showing that Mr. [redacted] is a founding partner of [redacted] in Hong Kong, Mr. [redacted] resume from an annual report of [redacted] company registration documentation for [redacted] a quarterly report of [redacted] and a letter from [redacted] human resources representative of [redacted] dated 2020.

These documents indicate that Mr. [redacted] is a director of several companies, including [redacted] both of which are located in Hong Kong. The letter from Mr. [redacted] verifies Mr. [redacted] employment with [redacted] in 2020 and his annual income of 1,000,000 Hong Kong dollars (HKD) from the company. However, this evidence does not establish that Mr. [redacted] employment income was deposited into, maintained, and accumulated in his [redacted] Hong Kong account. Additionally, the Petitioner's father provided a statement, indicating that he asked Mr. [redacted] for his bank statements and local remuneration tax bills in Hong Kong, but Mr. [redacted] refused to provide further documents for privacy, claiming that his personal financial documents involve commercial confidentiality.

The Petitioner now offers Mr. [redacted] statement, Mr. [redacted] income tax returns from 2013 to 2015, and Mr. [redacted] investment account statements with [redacted] as well as duplicate copies of the documents previously submitted to the Chief. Mr. [redacted] states that he has been involved in investment for many years, that the U.S. dollars he used to exchange with the Petitioner came from one of his [redacted] accounts for stock trading, and that the U.S. dollars he exchanged with the Petitioner came from his investment income. The assertation that the U.S. dollars in Mr. [redacted] Hong Kong account came from his investment income is inconsistent with the Petitioner's prior assertation that they came from Mr. [redacted] employment income. The Petitioner did not resolve this inconsistency by independent objective evidence, and this inconsistency calls into question the credibility of the remainder of the evidence submitted. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

[3] The Petitioner claims that the third-party exchanger, [redacted] is not a licensed or registered money services business but a friend of his father who used his personal fund to exchange the RMB 3,800,000 to U.S. dollars with his mother out of personal favor.

In addition to the inconsistency regarding the claimed source of the exchange funds, the record does not contain sufficient evidence to demonstrate that the U.S. dollars in Mr. [redacted] Hong Kong account derived from his investment income. Mr. [redacted] income tax returns show that he reported his overseas income of 6,000,000 New Taiwan dollars from [redacted] to the taxation authority in Taiwan each tax year from 2013 to 2015. Mr. [redacted] investment account statements from [redacted] indicate that he maintained an investment account with [redacted] Illinois, in 2015 and that as of March 2015, he had $1,058,940 in this investment account. However, this evidence does not support that the U.S. dollars in Mr. [redacted] Hong Kong account came from his investment income as claimed.

Mr. [redacted] states that he closed his [redacted] Hong Kong account over seven years ago, and, therefore, [redacted] no longer holds his details, and he is unable to provide bank statements. The Petitioner provides Guidance on the Proper Handling of Customers' Personal Data for the Banking Industry published by the Office of the Privacy Commissioner for Personal Data in Hong Kong, which provides that banks may retain customers' personal data for seven years after the creation of the relevant data or the end of the business relationship for the purposes of complying with the various legal or regulatory requirements for keeping books of accounts or customers' records. While we acknowledge Mr. [redacted] inability to provide his bank statements, the Petitioner has not offered other sufficient evidence to demonstrate the claimed lawful source of the U.S. dollars in Mr [redacted] Hong Kong account. 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).

The record reflects that the Petitioner's funds sent to Mr. [redacted] account have never left mainland China. Mr. [redacted] transferred U.S. dollars from his [redacted] Hong Kong account to the Petitioner's [redacted] account. As such, there is a break in the path of the Petitioner's investment funds. The plain language of 8 C.F.R. §§ 204.6(e) (defining "capital") and (j)(3) supports the requirement of USCIS that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds. *See Borushevskyi v. USCIS*, 664 F.Supp.3d 117, 128-29 (D.C.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (holding that USCIS' complete path interpretation of the regulations is its authoritative position as explained in the 1998 precedential decisions and that these decisions require the petitioner to establish the complete path of funds to demonstrate that the funds were obtained through lawful means). *See also 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* (emphasis added). *Id.* at 6. Here, the Petitioner has not traced the path of his investment funds to a lawful source. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

Because the record does not establish the complete path of the Petitioner's funds from mainland China to Hong Kong and then to the United States, the Petitioner must demonstrate by a preponderance of the evidence that the funds occurring after the break in the path derived from lawful means. *See* 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. While the Petitioner claimed that Mr. [redacted] obtained the exchange funds through his employment or investment income and provided Mr. [redacted] resume, income tax returns allegedly filed with the Taiwanese government, investment account statements from a brokerage firm in the United States, an income verification letter from one of his employers, and other documents, this evidence does not sufficiently demonstrate that the funds in Mr.

[redacted] Hong Kong account derived from his employment or investment income to establish the claimed lawful source of the exchange funds. The submitted documents do not show that Mr. [redacted] employment or investment income was deposited into, accumulated, and maintained in his [redacted] Hong Kong account until July 2016 when the funds were transferred to the Petitioner's [redacted] account for his investment in the NCE. The sources of funds in Mr. [redacted] Hong Kong account have not been sufficiently demonstrated. Accordingly, we conclude the record remains insufficient to establish by a preponderance of the evidence the claimed lawful source of the funds invested by the Petitioner in the NCE.

III. CONCLUSION

The Petitioner has not adequately documented the claimed lawful source and the path of his investment funds. *See* 8 C.F.R. §§ 204.6(e), (j)(3); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Specifically, the Petitioner has not provided sufficient evidence showing that the funds in the third-party exchanger's bank account in Hong Kong derived from his employment or investment income to establish the claimed lawful source of the exchange funds. As the record does not sufficiently show that the funds invested by the Petitioner have been obtained through lawful means, the Petitioner has not established by a preponderance of the evidence that he is eligible for the immigrant investor visa classification.

ORDER: The appeal is dismissed.