U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30833620

Date: DEC. 27, 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 he placed the required amount of capital at risk for the purpose of generating a return on the capital, or that all of the invested funds was obtained through lawful means. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

The Petitioner claimed eligibility for the investor visa based on his investment of $500,000 into [redacted], the new commercial enterprise (NCE) on October 5, 2015. The NCE proposed to pool $6 million from 12 immigrant investors and finance a mixed-use facility in [redacted] California. The NCE is the job creating entity, affiliated with [redacted]

The Chief denied the petition, concluding that the Petitioner has not placed his capital at risk, citing to *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998). The Chief noted that the Petitioner's business plan and a Confidential Private Placement Memorandum state that the NCE requires a maximum of 12 EB-5 investors and $6 million in EB-5 investor funds for this project, but U.S.

[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 December 11, 2015, the relevant law in existence on that date governs this appellate adjudication.

Citizenship and Immigration Services (USCIS) records indicate that there are 17 active EB-5 investors in the NCE. The Chief reasoned that the overflow of $2.5 million generated by the additional EB-5 investors is not capital placed at risk. The Petitioner asserts both on appeal and in his response to the notice of intent to deny (NOID) that the Chief did not correctly analyze the requirements of having "capital at risk" as described in the laws, regulations, and precedent decisions.

The regulation at 8 C.F.R. § 204.6(j)(2) provides that the foreign national investor must establish that they have invested or are actively in the process of investing the required amount of capital and must submit evidence verifying that they have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. The precedent decision *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998), explains that for an investor to establish that they have placed their investment funds at risk for the purpose of generating a return, "[t]he full amount of [EB-5] money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based."

Here, the Chief has not sufficiently explained how *Matter of Izummi* supports the conclusion that the Petitioner failed to demonstrate that he had placed at least $500,000 at risk for the purpose of generating a return on the capital to "the business(es) most closely responsible for creating the employment."[2] *Id.* at 179. The Chief's analysis should focus on whether the Petitioner demonstrated that he made the full amount of his own EB-5 funds available to the NCE without guaranteed return on all or a portion of his investment and supported with evidence that he has invested or is actively in the process of investing lawfully obtained capital. *See* 8 C.F.R. § 204.6(j)(2). Additionally, the Petitioner demonstrates on appeal that the project reached completion and submits an updated business plan, economic study, and evidence of withdrawal of some EB-5 investors. Accordingly, we remand the matter so that the Chief can reconsider the issue of capital at risk and determine whether the evidence supports the Petitioner's claim that he "actually made the capital contribution to the NCE at the time this petition was filed" and the amount of $500,000 required for the project was "released and pooled into the project's funds and was actively used by the NCE to fulfill the project completion" without any guarantee of return.

As an alternative ground for denial, the Chief concluded that the Petitioner had failed to establish the lawful source of all the funds invested in the NCE. *See* 8 C.F.R. § 204.6(g)(1) (where the NCE has multiple investors, including those seeking and those not seeking EB-5 classification, the regulation requires that "the source(s) of all capital invested [in the NCE] is identified and all invested capital has been derived by lawful means").

However, the Chief did not fully explain the reasons for the denial so that the affected party has a fair opportunity to contest the decision, and we have an opportunity to conduct a meaningful appellate review. 8 C.F.R. § 103.3(a)(1)(i). The Chief's NOID largely focused on the lawful source of the Petitioner's funds originating from accumulated earnings from his employment and the deficiencies in demonstrating the paths of funds that involved a third-party exchanger, [redacted]

[2] The facts in *Matter of Izummi* are distinguishable from the instant case. *Matter of Izummi* involved a regional center sponsored project where the NCE was funding a lending company (job creating entity), that would in turn make micro-loans to small businesses. *Matter of Izummi* held that USCIS "does not wish to encourage the creation of layer upon layer of 'holding companies' or 'parent companies,' with each business taking its cut and the ultimate employer seeing very little of the [investors'] money" for job creating purposes. *Id.*

[redacted] Although the Petitioner responded to the NOID with additional evidence, such as his employment records, bank statements, the exchanger's certificate and authorization, the Chief did not analyze any of the evidence regarding the lawful source of the Petitioner's invested funds. Instead, the Chief's denial solely relies on 8 C.F.R. § 204.6(g)(1) of demonstrating the lawful source of the "all equity contributions from non EB-5 members" and complete paths of funds for "all investment capital (EB-5 and non EB-5)" into the NCE without analysis of the relevant evidence in the record. On appeal, the Petitioner submits the NCE's tax records and [redacted] bank statements and tax records to "substantiate the legality of the equity contribution" as requested by the Chief. Therefore, we find it appropriate to remand the matter so that the Chief can analyze the lawful source of the Petitioner's invested funds and the lawful source of $7.8 million equity contributions based on the evidence in the record, including the newly submitted materials on appeal.

For the reasons discussed above, we are remanding the matter to allow the Chief to consider all materials in the record and for the entry of a new decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.