U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 05785491

Date: DEC. 29, 2020

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 (EB-5) 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 United States economy and create at least 10 full-time positions for qualifying employees.

The Chief of the Immigrant Investor Program Office denied the petition on multiple grounds, including the Petitioner did not establish that he invested his own, lawfully acquired funds in [redacted] the NCE, whose general partner is [redacted] (the Regional Center), a U.S. Citizenship and Immigration Services (USCIS) designated regional center.[1] *See* 8 C.F.R. § 204.6(g)(1), (j)(2) (2016); *Matter of Soffici*, 22 I&N Dec. 158, 164-65 n.3 (Assoc. Comm'r 1998). The matter is now before us on appeal.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in a NCE. The foreign national must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. An immigrant investor may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. Regional centers apply for designation as such with USCIS. Designated regional centers identify and work with NCEs, which in turn are associated with a specific investment project taken on either directly by the NCE, or by one or more separate entities known as the "job creating entities" (JCEs). 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) (2016).

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

[1] A regional center is an economic unit involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e) (2016).

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. 206, 210-11 (Assoc. Comm'r 1998); *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] *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

The Petitioner filed the petition in August 2016. He claimed on pages 1 and 2 of the petition that he invested $500,000[3] in the NCE. According to pages 6 through 9 of the updated business plan, dated September 2018, the NCE sought to raise up to $15,000,000 EB-5 funds from 30 foreign national investors to loan to [redacted] the JCE. The JCE planned to use the EB-5 capital and other funds for "the development, construction and subsequent operations of [redacted]' in [redacted] New York. The project was known as the [redacted]

According to the Petitioner, his grandfather, [redacted] gifted funds to his mother, [redacted] who then gifted funds to him to invest in the NCE. Page 12 of his counsel's August 23, 2016, letter, explains that the Petitioner's investment derived from proceeds Mr. [redacted] received from selling a property in [redacted] China, and from his parents' savings. In addition, the Petitioner indicates that after receiving Renminbi (RMB) from his family in China, he engaged in a currency swap with his uncle, [redacted] who sent him U.S. dollars (USD) in exchange for RMB.

We will dismiss the Petitioner's appeal based on the following reasons. First, the Petitioner has not demonstrated that the funds he claimed to have invested in the NCE were his own. The record includes bank documents showing that on August 10, 2016, Mr. [redacted] remitted $540,050 to the regional center.[4] The Petitioner states that Mr. [redacted] assisted him in bringing his funds from China to the United States to invest in the NCE. The [redacted] bank remittance record, however, does not specify that Mr. [redacted] sent the funds to the regional center on behalf of the Petitioner. Instead it lists [redacted] the Petitioner's mother, under "postscript to payee." This document, thus, does not support the assertion that Mr. [redacted] transferred funds to the regional center to facilitate the Petitioner's investment in the NCE.

Second, assuming Mr. [redacted] did remit the funds on the Petitioner's behalf, the record is insufficient to confirm the lawful source of the funds. The Petitioner provides an August 1, 2016, document entitled [redacted] noting that the company agreed to loan $541,500 to Mr. [redacted] Bank record shows that on August 10, 2016, the company transferred $541,500 to Mr.

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[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 located in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2016).

[4] The record includes a copy of an August 15, 2016, check the regional center issued to the NCE, noting "for capital contribution to LP – [redacted] for [the Petitioner]," and an August 12, 2016, letter from the regional center's managing member, [redacted] acknowledging receipt of funds from the Petitioner.

's account (ending in 4833). An bank remittance record shows that on the same day, Mr. transferred $540,50 from his account (ending in 4833) to the regional center, funds that the Petitioner claims to have financed his EB-5 investment in the NCE.

The Petitioner, however, has not sufficiently demonstrated the lawful source of the $541,500 remitted to Mr. In a September 9, 2018, statement, Mr. stated that the company, which he owns with another individual, is located in and "engage[s] in retail and distribution business of caps, hats, scarves, gloves and other related accessories to the United States, Canada and Europe." While the Petitioner has presented evidence of the business's registration in and two pages of its unaudited 2015 financial documents, he has not established that the company lawfully acquired the $541,500 it sent to Mr in August 2016. The Petitioner has not offered other documents to demonstrate the financial documents' accuracy or veracity, or to show that based on its size and activities, the company likely had the funds to loan to Mr. Without additional corroboration, the Petitioner has not documented the lawful source of the $540,050 Mr remitted to the regional center, which was derived from a $541,500 loan he obtained from

Third, the Petitioner has not demonstrated that the funds he received from his mother, Ms. ever left China or that the funds Mr. sent to the regional center belonged to the Petitioner. Bank statements show that on August 13, 2016, Ms. remitted 3,596,750 RMB from her Chinese account (ending in 3078) to the Petitioner's Chinese account (ending in 1112), and that the Petitioner remitted the same amount, on the same day to Mr. s Chinese account (ending in 6697). The record lacks evidence confirming the 3,596,750 RMB ever left China. In addition, the Petitioner remitted the RMB to Mr. on August 13, 2016, three days after Mr. had transferred USD to the regional center. As the Chief discussed in her decision, this evidence does not support the Petitioner's claim that at the time Mr. sent the USD to the regional center, on August 10, 2016, he was sending funds that belonged to the Petitioner, as he had not yet received the RMB from the Petitioner.

Fourth, the Petitioner has not sufficiently documented the lawful source of his mother's gift. In an August 13, 2016, letter, Ms. stated that she "gave [the Petitioner] RMB 3,596,750 (about USD 540,050) as an irrevocable monetary gift." In an August 4, 2016, letter, the Petitioner's grandfather, Mr. stated that he "gave [Ms. RMB 3,370,000 as an irrevocable monetary gift." Ms bank statement for her Chinese account (ending in 3078) lists an August 5, 2016, credit of 3,370,000 RMB. Under "abstract," the bank statement includes the following note for the transaction: "Remit foreign exchange in WZ 16080500216466." This document does not confirm that the funds originated from Mr In addition, the Petitioner claims that Mr. acquired the 3,370,000 RMB from selling a property in China, in April 2016. The record lacks evidence confirming that Mr. retained the sale proceeds between April and August 2016, such that he had the funds to gift to Ms. Without additional documentation verifying that Mr. 's receipt and retention of the 3,370,000 RMB, the Petitioner has not documented the lawful source of the funds.

Moreover, although the Petitioner claims that a portion of Ms. 's gift, 226,500 RMB,[5] derived from his parents' savings, he has not established that they lawfully acquired the funds. The record

[5] 3,596,750 RMB, Ms s purported gift to the Petitioner, minus 3,370,000 RMB, Mr 's purported gift to Ms equals to 226,750 RMB.

includes documents that discuss employment and income of Ms. [redacted] and the Petitioner's father, [redacted] Such evidence, however, does not reveal how much of their income, if any, they retained. Evidence of earnings, without additional corroboration demonstrating amounts saved from income, is insufficient to establish that the Petitioner's parents had lawfully accumulated adequate funds to gift to him. In addition, Ms. [redacted]s bank statement for a Chinese account (ending in 5743) indicates that she received a 280,000 RMB credit on August 5, 2016, an amount she then remitted to her other Chinese account (ending in 3078), and later gifted, at least partially, to the Petitioner. The Petitioner has not shown the lawful source of Ms. [redacted]'s 280,000 RMB credit.

Finally, the Petitioner alleges that part of his EB-5 investment derived from proceeds his grandfather, Mr. [redacted] received for selling a property in [redacted] China. The "House Purchase and Sales Agreement of [redacted] University of Aeronautics and Astronautics" shows that Mr. [redacted] purchased the property in 2005 and the purchasing price was 386,079 RMB. According to a September 2018 "Certificate of Employment Income," Mr. [redacted] was a professor at the [redacted] University of Aeronautics and Astronautics and his average annual income from 1995 to 2005 was "about RMB 24,000, totaling RMB 228,000." As this document shows that the cost of the property exceeded Mr. [redacted]'s 10-year combined income, the evidence does not confirm that he used lawfully acquired funds to purchase the property in 2005, the sale of which partially financed the Petitioner's purported EB-5 investment. The record also lacks evidence confirming how much of his income Mr. [redacted] saved before the 2005 property purchase. Without additional documentation, the Petitioner has not established that Mr. [redacted] acquired the property with lawfully obtained funds.

On appeal, the Petitioner argues that the Chief violated the Administrative Procedure Act (APA) by "request[ing evidence] of a third-party's source of funds" and she erred in applying an incorrect, heightened standard of proof. The record does not support this contention. The Chief required the Petitioner to document the lawful source and path of the funds he claimed to have invested in the NCE in August 2016. Such requirements are specified in the regulation at 8 C.F.R. § 204.6(e) and (j)(2). *See also* 8 C.F.R. § 103.2(b)(1); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195; 8 C.F.R. § 204.6(g) (providing that "the source(s) of all capital invested [in the NCE must be] identified and [a petitioner must establish] all invested capital has been derived by lawful means"). Accordingly, for the reasons we have discussed in this decision, we conclude that the Petitioner has not satisfied the regulatory requirements or established, by a preponderance of the evidence,[6] his eligibility for the EB-5 classification. Specifically, he has not demonstrated that, he had invested at least $500,000 of his own, lawfully acquired funds in the NCE, as claimed.[7] *See* 8 C.F.R. § 204.6(j)(2).

III. CONCLUSION

The Petitioner has not established his eligibility for the EB-5 classification. *See* 8 C.F.R. § 204.6(e), (j)(3). We therefore dismiss his appeal.

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[6] If a petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *see also* 6 *USCIS Policy Manual* G.2(E), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[7] In light of this decision, we will not address the Chief's other grounds for denial, including impermissible material changes to the petition and lack of English translations of foreign language documents that met regulatory requirements under 8 C.F.R. § 103.2(b)(3). Should the need arise, we will review the Chief's additional grounds for denial.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.