U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9041959

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, concluding that the Petitioner did not establish the lawful source of the funds he claimed to have invested in [redacted] the NCE, which is associated with [redacted] an entity that U.S. Citizenship and Immigration Services (USCIS) designated to participate in the EB-5 program.[1] Specifically, the Chief determined that the Petitioner did not sufficiently document the path of the funds from him to the NCE. On appeal, the Petitioner submits a brief as well as additional evidence, and maintains that he has shown his eligibility for the EB-5 classification.

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 entity" (JCE). 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) (2017).

[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) (2017).

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 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

In this case, the Petitioner claims to have invested $500,000[3] in the NCE. According to page 2 of an October 2016 business plan, the NCE seeks to solicit funds from foreign national investors to lend to [redacted] to facilitate the development of a [redacted] and residential property in [redacted], Massachusetts.

According to the Petitioner, he sold a property and deposited the sale proceeds in his accounts in Vietnam, his country of citizenship and residence. The bank documents showed that on December 15, 2017, he made two withdrawals: 1,000,116,667 Vietnamese Dong (VND) and VND 11,900,000,000, respectively. He alleges that on the same day of his withdrawals, he handed VND 12,871,113,000 (equivalent to approximately $500,000) in cash to [redacted], an individual who he states worked for [redacted] a Vietnamese business. The Petitioner claims that [redacted] partnered with an Australian entity [redacted], trading as [redacted].[4] He provides that after he gave Mr. [redacted] VND 12,871,113,000 in Vietnam, [redacted] remitted $550,030 from Australia to the NCE's escrow account in the United States. In a December 2017 letter, the NCE acknowledged its receipt of $550,005.[5]

The Petitioner has not established, by a preponderance of the evidence,[6] the complete path of the funds he purportedly invested in the NCE. First, the record lacked evidence indicating what [redacted] did with the VND 12,871,113,000 in cash after he purportedly received them from the Petitioner on December 15, 2017. The Petitioner has also not presented any document, such as a receipt, from [redacted] verifying it received the funds. The record includes [redacted]

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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).

[4] The Petitioner has submitted documents indicating that [redacted] is an Australian business that is regulated by the governmental agency Australian Securities and Investments Commission.

[5] It appears that the NCE received $25 less than the amount that [redacted] had sent. Presumably, the difference was due to a bank or financial charge.

[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.

[redacted] Tax Invoice[s]," purportedly showing that the Petitioner's funds went from Vietnam, in VND, to Australia, in Australian dollar (AUD), and then from Australia, in AUD, to the United States in U.S. dollar (USD). The Petitioner, however, has not corroborated the information in the tax invoices with credible evidence, such as bank or financial institution remittance or transfer receipts verifying the alleged path of funds. In fact, page 4 of his response to the Chief's notice of intent to deny states that the "Petitioner's funds d[id] not leave Vietnam." This statement is inconsistent with the information noted in the tax invoices. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that "[i]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence" and that "[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice"). Moreover, the tax invoices provide that the Petitioner's "payment method" for the Vietnam to Australia remittance was "deposit," but the record lacks evidence that the VND 12,871,113,000 he purported gave to [redacted] was deposited anywhere.

Second, the record does not establish that [redacted] was employed by [redacted] at the time the Petitioner allegedly gave him the VND 12,871,113,000 in cash. The record includes a "Collaboration Contract," noting that [redacted] worked for [redacted] between January 2016 and January 2017, but does not confirm that [redacted] was employed by the company on December 15, 2017.

Third, the record includes other documents that contain inconsistent information. For example, according to a receipt, dated December 15, 2017, the Australian company [redacted] received VND 12,871,113,000 from the Petitioner. This receipt, however, is inconsistent with the Petitioner's claim that it was [redacted] who had received the funds in Vietnam. Furthermore, as noted, the Petitioner has not presented sufficient documents detailing what happened to the VND 12,871,113,000, or showing that they ever reached [redacted], as the receipt attempts to show. Similarly, in a December 15, 2017, letter, [redacted] stated that "the USD 550,030 was transferred by [redacted] in Australia, to [the NCE's escrow account] in the United States," but this statement is inconsistent with information noted in a document entitled "Incoming FED Message" and the NCE's December 2017 letter, which provide that [redacted] sent and the NCE received the funds on December 19, not 15, 2017. *See Ho*, 19 I&N Dec. at 591-92.

Fourth, while the Petitioner alleges that [redacted], the Vietnamese company for which [redacted] allegedly worked, is affiliated with the Australian entity [redacted] and could accept money on [redacted]'s behalf in Vietnam, the "Principal Contract" between the two companies does not support this allegation. According to the Principal Contract, if someone in Australia wanted to send money to Vietnam, he or she would remit funds to [redacted] in Australia. [redacted] under its trading name [redacted] would then transfer money from its Australian account to [redacted]'s Vietnamese account, and [redacted] would locate the intended beneficiary or recipient in Vietnam and distribute the money to that person. Similarly, Schedule 2 of the companies' "Service Agreement" indicates that [redacted] would receive transaction fees for "facilitat[ing] money transfers from Australia to the Vietnam for [redacted]'s customers." Neither document references [redacted] accepting money in Vietnam for the Australian company.

Additionally, according to [redacted]'s business license in Vietnam, which the Petitioner presented in his response to the Chief's request for evidence (RFE), the Vietnamese government has allowed the company to receive funds through "foreign transfers to pay for beneficiary in interior at [its] main office." The business license as well as the "Principal Contract" and "Service Agreement" do not support the Petitioner's contention that [redacted] could lawfully accept money in Vietnam for the Australian company, as the Petitioner claims happened in this case.

On appeal, the Petitioner submits additional evidence, including statements from a Vietnamese attorney, a business executive who has used [redacted]'s services to facilitate EB-5 investments, and the director of [redacted]. The statements claim that it was lawful for [redacted] through [redacted], to accept the Petitioner's VND in Vietnam in exchange for [redacted] from Australia sending USD to the NCE's escrow account in the United States. None of the statements, however, overcomes the concerns we have raised above based on the record, including inconsistent documentation, insufficient evidence of [redacted]'s employment with [redacted] on December 15, 2017, and insufficient documents confirming that [redacted] could lawfully accept funds in Vietnam for [redacted].

The Petitioner claims on appeal that USCIS "has approved hundreds of Vietnamese investors who have utilized licensed value transfer exchange firms in order to obtain U.S. dollars and wire said funds to the United States." At issue in this case is not the Petitioner's alleged reliance on intermediaries, such as [redacted] and [redacted] to assist him in exchanging VND to USD and in remitting funds from Vietnam to the United States. Rather, as we have explained above, at issue is that the Petitioner has not sufficiently documented the complete path of the investment funds, from the proceeds he received for selling his property in Vietnam to the funds [redacted] sent to the NCE's escrow account. *See Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.[7] Without additional corroboration, the Petitioner has not demonstrated the lawful source of his purported EB-5 investment. *See* 8 C.F.R. § 204.6(j)(3), (e).

Additionally, on appeal, the Petitioner references USCIS's deference policy. The deference policy provides that "[w]here USCIS has previously evaluated and approved certain aspects of an investment, USCIS generally defers to that favorable determination at a later stage in the process." 6 *USCIS Policy Manual* G.6, https://www.uscis.gov/policymanual/HTML/PolicyManual.html. The policy, however, also specifies that "USCIS will still conduct a de novo review of each prospective immigrant investor's lawful source of funds and other individualized eligibility criteria," which is what we have done in this case. *See id.*

For the reasons we have discussed, we find that the Petitioner has not established, by a preponderance of the evidence, his eligibility for the classification. It is his burden to demonstrate his eligibility for the EB-5 classification, which includes establishing the lawful source of his investment with documents that trace the path of the funds back to a lawful source. *See Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. Here, the Petitioner has not made such a showing.

[7] *See supra* note 2.

III. CONCLUSION

Based on the reasons stated above, we conclude that the Petitioner has not presented sufficient evidence tracing the path of the funds that [redacted], trading as [redacted] remitted to the NCE on his behalf to a lawful source. *See* 8 C.F.R. § 204.6(e), (j)(3); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. He has therefore not established by a preponderance of the evidence the lawful source of the funds he claims to have invested in the NCE.

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.