U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31840095

Date: FEB. 05, 2025

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 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.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish that the Petitioner's invested capital 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 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 asserted eligibility based on an investment into [redacted] the new commercial enterprise (NCE) in the amount of $500,000 on January 11, 2017.[1] The NCE, affiliated with the regional center, [redacted] proposed to pool up to $350,000,000 from 700 immigrant investors to finance the redevelopment of a hotel, theater, and retail/entertainment space in [redacted] New York.

The Petitioner claimed that her investment funds originate from a mortgage loan secured by a property owned by her father in China. The Petitioner claimed her father purchased a real property for 2,318,000 Renminbi (RMB) on February 28, 2009, with his accumulated income working as a physician for [redacted] in China since July 1993. The records show that the Petitioner's father obtained a loan of RMB 3,800,000 secured by this real property on December 2, 2016, and the loan proceeds of RMB 3,800,000 were deposited to the father's [redacted] account on December 7, 2016.

The Petitioner claimed that her father sent RMB 3,800,000 to his friend, [redacted] and [redacted] exchanged the funds into U.S. dollars before transferring to the Petitioner. [redacted] declaration dated December 26, 2016, specifically indicates that he is "a friend of [redacted] [the Petitioner's father]" and "in order to help [redacted] daughter make investment in the United States dollars to apply for USA EB-5 immigration, I agreed and executed a currency swap with them." This declaration further states that "[o]n December 12, 2016, [redacted] transferred RMB 3,800,000.00 from his bank account at [redacted] [account number ending in 9993] to my bank account at [redacted] [account number ending in 0716]" and "[o]n December 20, 2016, I transferred US $552,100.00 from my bank account at [redacted] Branch [account number ending in 3833] to [the Petitioner's] bank account at [redacted] [account number ending in 4599]." The Petitioner also submitted her [redacted] account statements showing a wire transfer of $552,050 to the NCE's escrow account on January 11, 2017.

The Chief issued a request for evidence (RFE) stating that no evidence was provided to demonstrate the source of funds used by [redacted] to assist the Petitioner with the currency exchange. In response, the Petitioner claimed that another third-party named [redacted] aided [redacted] in the currency exchange. In support of her claim, the Petitioner submitted a copy of the [redacted] statements showing a deposit of RMB 3,800,000 from the Petitioner's father on December 12, 2016, and a transfer of RMB 3,969,599 to [redacted] on December 14, 2016. However, the Petitioner asserted that [redacted] was unable to contact [redacted] to obtain corroborating evidence of the money transfer and explained that "the statements for the transfers between [redacted] and [redacted] are unavailable" due the significant lapse time as "banks only retain historical transaction records for a limited time." The Chief subsequently denied the petition, concluding that the record does not contain sufficient evidence to demonstrate the source of funds used by the third-party

[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* section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed his petition on February 27, 2017, the relevant law in existence on that date governs this appellate adjudication. The Petitioner also 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).

exchangers and that the Petitioner did not establish her investment funds were derived from lawful means.

On appeal, the Petitioner offers additional evidence and claims that there was another exchanger in the paths of funds, [redacted] In support, the Petitioner provides her father's statement of explanation and a flow chart. The flow chart includes [redacted] (account number ending in 2861) as the legitimate and designated account of [redacted] for the purpose of "receiving RMB capital in the Chinese Mainland." The flow chart also shows that [redacted] purchased U.S. dollars from [redacted] "a financial service company registered in Australia" that "can provide and operate a foreign exchange business on a global scale," and [redacted] deposited $552,189.04 into [redacted] bank account. The Petitioner also submits [redacted] company registration documents, its foreign exchange record dated December 14, 2016, showing that there was an "E-Transfer" of $552,189.04 to "Payee [redacted] and "Payee Bank [redacted] and [redacted] account ending in 3833 showing three deposits from unidentified sources that total $552,189.04. The Petitioner adds that the new evidence submitted on appeal was not available to her at the time of the RFE due to the COVID-19 restrictions but does not explain why this information was not previously disclosed in the initial filing or with the RFE response.[2]

However, the Petitioner has not provided the bank account statements of [redacted] to demonstrate that the money originated from the Petitioner's father in China was the amount that exchangers, [redacted] and [redacted] converted into U.S. dollars. Despite the Petitioner's claim that [redacted] is a registered financial money exchange services company in Australia, the record lacks documentation to show how the third-party exchanger, [redacted] is associated with [redacted] or that [redacted] is independently licensed or registered as a money services business. The Petitioner has claimed throughout the proceedings that the investment funds were routed through third-party exchangers, [redacted] and [redacted] but has not produced sufficient documentation to demonstrate the legitimacy of these exchangers and the source of funds in the exchangers' bank accounts.

The plain language of 8 C.F.R. §§ 204.6(e) and 204.6(j)(3) requires petitioners to identify the source of funds and document the complete path of funds. *See 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. *See id.* at 6. Moreover, a petitioner is required to establish the complete path of funds to demonstrate that the funds were obtained through lawful means. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. USCIS' complete path interpretation of the regulations is its authoritative position as explained in *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024).

[2] We also identify a potential ground of ineligibility not raised by the Chief to be addressed in any future proceedings. As the information regarding [redacted] was not part of the Petitioner's original claims, this may constitute an impermissible material change to the petition. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175-176 (Assoc. Comm'r 1998) (adopting the reasoning in *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition."). *See also Kungys v. United States*, 485 U.S. 759, 770-72 (1988) (stating that a change in fact is material if the changed circumstances would have a natural tendency to influence or are predictably capable of affecting the decision).

Based on the evidence in the record, the Petitioner has not sufficiently demonstrated that the funds transferred by her father to his friend, [redacted] in Chinese bank accounts have left mainland China. While the Petitioner claimed that [redacted] received U.S. dollars in his [redacted] account by swapping currency with [redacted] and/or [redacted] the submitted documents do not establish the father's original loan proceeds were deposited into and maintained in [redacted] bank account to establish the claimed lawful sources of the exchange funds by a preponderance of the evidence. And the sources of funds in [redacted] account that were purportedly deposited by [redacted] and/or [redacted] for eventual deposit in the Petitioner's [redacted] account have also not been sufficiently documented. 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). Here, the Petitioner has not met the burden.[3]

III. CONCLUSION

As the evidence in the record does not sufficiently demonstrate the lawful source of funds, we conclude that the Petitioner has not established by a preponderance of the evidence that she is eligible for the immigrant investor visa classification.

ORDER: The appeal is dismissed.

[3] We decline to address the Petitioner's appellate arguments regarding the Chief's determination that the Petitioner did not establish the source of investment funds originating from her father's accumulated employment income as it would not change the outcome of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).