U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 05188064

Date: FEB. 7, 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 eligibility for the EB-5 classification. Specifically, the Chief determined that the Petitioner did not document the lawful source of the funds she remitted to [redacted] the NCE, which is affiliated with [redacted] (the Regional Center), a United States Citizenship and Immigration Services (USCIS) designated regional center.[1] On appeal, the Petitioner submits additional evidence and maintains that she has shown eligibility for the EB-5 classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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. 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).

[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).

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

The Petitioner indicates she invested $500,000 in the NCE.[3] According to pages 3-5 of the business plan, the NCE seeks to raise up to $61,500,000 EB-5 funds from 123 foreign national investors to loan to [redacted] the JCE. The JCE plans to use the EB-5 capital and other funds to develop the [redacted] hotel located in [redacted] NY.

In this case, the Petitioner alleges that her EB-5 capital derived from 3,900,000 renminbi (RMB) mortgage loan secured by real property owned by the Petitioner and her spouse. The record indicates the loan proceeds were deposited into the Petitioner's [redacted] Bank account ending in 8174 on April 19, 2017. According to [redacted]'s signed statement dated April 30, 2017, the Petitioner needed his assistance with conducting a currency exchange so she could invest her EB-5 funds in the NCE. The Petitioner remitted 3,900,000 RMB to [redacted] Bank of China [redacted] account ending in 5274 on April 19, 2017. [redacted] then transferred $566,000 from his [redacted] Bank [redacted] account ending in 5561 to the Petitioner's [redacted] Bank [redacted] account ending in 5631 on April 28, 2017. The Petitioner remitted $550,100 to the NCE on May 4, 2017.

The Chief issued a request for evidence (RFE) and a notice of intent to deny (NOID) requesting the Petitioner provide evidence the $550,100 [redacted] transferred to the Petitioner derived from lawful sources and document the complete path of the funds invested in the NCE. The Petitioner responded to the requests with statements from [redacted] indicating he was not willing to provide any financial data other than his employment verification due to concerns regarding his personal privacy. The Chief then concluded that the Petitioner failed to document the lawful sources of his investment funds because she had not documented the path of the funds, as required. *See Matter of Izummi*, 22 I&N Dec. 169 at 195. For the reasons we will discuss below, we find that the Petitioner has not established, by a preponderance of the evidence, her eligibility for the classification. Specifically, she has not sufficiently documented the lawful source of the funds provided from [redacted] and then invested in the NCE.

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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(t)(2).

On appeal, the Petitioner claims it was unreasonable to request [redacted]'s financial documentation because the Petitioner established the path of funds by showing ownership over the USD remitted to the NCE. The Petitioner provided a statement detailing her efforts to convince [redacted] to submit financial documentation and [redacted] submitted a statement claiming he requested his bank documents but was unable to obtain the documents before the Petitioner's deadline to appeal. The Petitioner's claim is not convincing, as at the time of filing her I-526, she was required to show her invested capital did not derive, directly or indirectly, from unlawful sources and that she must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(e) and 8 C.F.R. § 204.6(j)(3). Additionally, the Petitioner was advised in both the RFE and the NOID that she must show the path of funds into the NCE.

The Petitioner also argues requesting evidence of the path of funds from a third party is a mistake of law because it violates the Administrative Procedures Act (APA), similar cases have been approved in the past, and applies an incorrect, heightened standard of proof. These arguments are also not persuasive as the Petitioner did not provide sufficient documentary evidence showing the path of [redacted]'s funds into the NCE. While the Petitioner documented the source of her mortgage loan proceeds, the documentation of the path of these funds stopped when they were deposited in [redacted]'s [redacted] Bank of China [redacted] account ending in 5274 on April 19, 2017. When USCIS requested the Petitioner provide additional evidence due to this break in the path of funds, [redacted] refused to provide any documentation showing his lawful retained earnings were remitted to his [redacted] Bank [redacted] account ending in 5561 and then to the Petitioner. Without additional corroborating evidence confirming the source(s) of the funds [redacted] sent to the Petitioner, he has not established that the funds he received were derived by lawful means. *See* 8 C.F.R. § 204.6(i)(3). Notwithstanding the Petitioner's statements claiming it is unreasonable to request third party financial documentation, it remains her burden to demonstrate her eligibility for the EB-5 classification, which includes establishing the lawful source of her 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, for the reasons discussed, the Petitioner has not made such a showing.

III. CONCLUSION

Based on the reasons stated above, we conclude that the Petitioner has not presented sufficient evidence tracing the path of the funds she received from [redacted] 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. She has therefore not established by a preponderance of the evidence the lawful source of the funds she 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.