U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26410790

Date: FEB. 13, 2025

Appeal of Immigrant Investor Program Office Decision

Form I-526, Immigrant Petition by Standalone Investor

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) (2018).[1] This employment-based fifth preference (EB-5) classification makes immigrant visas available to noncitizens who invest the requisite amount of qualifying capital in a new commercial enterprise (NCE) that will benefit the U. S. economy and create at least 10 full-time positions for qualifying employees.

The Chief of the Immigrant Investor Program Office revoked the approval of the petition on several grounds, including that there was a material change to the facts underlying the petition and that the record did not establish the lawful source of the Petitioner's funds, that the Petitioner invested or was in the process of investing the requisite capital, that the new commercial enterprise (NCE) will create at least 10 full-time positions for qualifying employees, or that the NCE will be located in a targeted employment area (TEA). 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

Section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. *See also* 8 C.F.R. § 205.2(a) (stating that U. S. Citizenship and Immigration Services (USCIS) may revoke the approval of a petition upon notice to the petitioner on any ground other than those specified in 8 C.F.R. § 205.1 when the necessity for the revocation comes

[1] On March 15, 2022, the EB-5 Reform and Integrity Act was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in INA 203(b)(5), and adding significant new integrity provisions.
https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221006 EB5ReformAndIntegrityAct.pdf. As the Petitioner had filed this petition in March 2017, the relevant law then in existence governs this appellate adjudication.

to the attention of USCIS).

There is "good and sufficient cause" within the meaning of section 205 of the Act to revoke the approval of a visa petition if the evidence of record at the time of the decision, including any explanation or rebuttal submitted by the petitioner, warrants a denial based on the petitioner's failure to meet their burden of proof. *Matter of Estime*, 19 I&N Dec. 450, 452 (BIA 1987). In addition, the realization that the initial approval of the petition was in error may, in and of itself, be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). A revocation can only be grounded upon, and the petitioner is only obliged to respond to, the allegations in the notice of intent to revoke. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988).

Volume 6, Part G, Chapter 3 of the USCIS Policy Manual articulates USCIS' policy regarding deference to previous agency determinations. As a general matter, USCIS does not reexamine determinations made earlier in the EB-5 process, and such earlier determinations will be presumed to have been properly decided. *See generally* 6 *USCIS Policy Manual* G.3(A)(2), https://www.uscis.gov/policy-manual. Conversely, USCIS does not defer to a previously favorable decision in later proceedings when, for example, the underlying facts upon which a favorable decision was made have materially changed, there is evidence of fraud or willful misrepresentation, or the previously favorable decision is determined to be legally deficient. *Id.* A change is material if it would have a natural tendency to influence or is predictably capable of affecting the decision. *See Kungys v. United States*, 485 U.S. 759, 770-72 (1988).

A foreign national may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. To be eligible for the EB-5 immigrant investor classification, an investor must establish, among other requirements, that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e) (defining "capital"). 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 complete path of the funds back to a lawful source.[2] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

In addition, an investor seeking EB-5 classification must show that their investment will benefit the U.S. economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4). The regulation at 8 C.F.R. § 204.6(j)(4)(i) provides that to establish job creation, a petitioner must submit:

> (A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or

[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).

(B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.[3]

Matter of Ho explained that a comprehensive business plan must be sufficiently detailed to permit USCIS to draw reasonable inferences about job-creation potential. *Matter of Ho*, 22 I&N Dec. at 213. Additionally, *Matter of Ho* held that a "comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives." *Id.*

II. ANALYSIS

The Petitioner has claimed that he invested $500,000 in the NCE, [redacted] and that the NCE will create at least 10 qualifying jobs based upon operating a restaurant, [redacted] in [redacted], California. After initially approving the petition, the Chief issued a notice of intent to revoke (NOIR). The NOIR notified the Petitioner that USCIS had become aware that the underlying facts of the petition had materially changed, specifically that publicly available information indicated that the restaurant operated by the NCE was closed and no longer operating. The NOIR notified the Petitioner that, based upon the closure of business operations, the record no longer established that the NCE will create at least 10 full-time positions for qualifying employees or that the NCE is principally doing business in a targeted employment area (TEA). The NOIR also notified the Petitioner that the record did not establish that the Petitioner had invested or is actively in the process of investing the required amount of capital, that the capital was obtained through lawful means, or that the Petitioner will be engaged in the management of the NCE. The Petitioner responded to the NOIR and the Chief thereafter revoked the petition's approval, concluding that the response to the NOIR was insufficient to overcome the bases for revocation provided.

On appeal, the Petitioner claims that there is not good and sufficient cause to revoke the petition's approval because there has not been a material change to the facts underlying the petition. The Petitioner also asserts that USCIS should defer to its prior determination that he invested the required amount of capital, established the lawful source of his funds, and will be engaged in the management of the NCE. For the reasons discussed below, we conclude that the Petitioner has not established eligibility for the EB-5 classification and that the petition was revoked for good and sufficient cause.

In support of the claim that there has not been a material change in the underlying facts, the Petitioner contends that his petition is distinguishable from the facts of *Matter of Izummi*, 22 I&N Dec. at 175, and the cases upon which its reasoning relies: *Matter of Katigbak*, 14 I&N Dec. 45 (Reg'l Comm'r 1971), and *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981). The Petitioner states that those cases dealt with petitioners who were ineligible for the benefit sought at the time of filing and who thus attempted to make material changes to their petitions to make them conform to the agency's requirements. The Petitioner contends that the instant matter is distinguishable because his petition was approvable at the time it was filed, as evidenced by the fact that it was initially approved.

[3] The two-year job creation period described in 8 C.F.R. § 204.6(j)(4)(i)(B) commences six months after the adjudication of the petition. *See generally* 6 *USCIS Policy Manual, supra*, at G.2(D)(5).

According to the Petitioner, because the petition was approvable at filing, any changes that later occurred were therefore not made "in an effort to make an apparently deficient petition conform to [USCIS] requirements" and thus are not "material" as contemplated by *Matter of Izummi* and the cases upon which its reasoning relies. *See Matter of Izummi*, 22 I&N Dec. at 175.

The Petitioner's claim is not persuasive. The Petitioner's argument would require us to conclude that, if a petition appears approvable as initially filed, no later change in circumstance would render that petition not approvable. This claim is not supported by regulation or USCIS policy. A petitioner must be eligible for the benefit requested not only at the time of filing but must also maintain eligibility through adjudication. 8 C.F.R. § 103.2(b)(1). Additionally, if material changes occur after the approval of a petition, but before the investor has obtained conditional resident status, such changes generally constitute good and sufficient cause to revoke the approval of a petition, if not overcome. *See generally* 6 *USCIS Policy Manual* G.3(C)(1), https://www.uscis.gov/policy-manual.

Moreover, a "material change" is not limited to a change made in an effort to make a deficient petition conform to USCIS requirements. As noted by the Chief in the NOIR and the revocation decision, a material change is one that would be predictably capable of affecting or would have a natural tendency to influence our decision. *See Kungys v. United States*, 485 U.S. at 771. The Petitioner attempts to characterize the closure of the restaurant as only a temporary delay and contends that it is not material because the Petitioner still intends to operate the same type of business—a restaurant—in the same city—[redacted] California. We disagree. The closure of the entity upon which job creation relies is a change that would have the natural tendency to influence and affect our decision. *See id.* Moreover, the Petitioner established eligibility for the reduced minimum investment amount of $500,000 based upon investing in an NCE that is principally doing business in, and creates jobs in, a targeted employment area. *See* 8 C.F.R. § 204.6(j)(6). Although the Petitioner has stated his intention to open a restaurant at a new location in [redacted] California, this is not sufficient to establish eligibility, including that the NCE is doing business within a TEA, without additional supporting documentary evidence such as a new lease agreement, new business licenses and permits, and the financial resources to open a new restaurant.

Regarding the Chief's decision to revoke the petition because the Petitioner has not sufficiently established the lawful source of the funds, or that he invested the required amount of capital in the NCE, the Petitioner asserts that USCIS must defer to its initial approval. The Petitioner also asserts that he has established that a specific license from the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) was not required of the transactions made in completing his investment because they were covered by a general OFAC license, and therefore are lawful.

The Petitioner's claims do not overcome the bases for the revocation. First, the Petitioner's claim that USCIS must defer to its prior determination is not meritorious. If an initial approval of a petition was in error, this may, in and of itself, be good and sufficient cause for revoking the approval of a petition. *Matter of Ho*, 19 I&N Dec. at 568. USCIS does not defer to a previously favorable decision when it is determined to be legally deficient. *See generally* 6 *USCIS Policy Manual, supra* at G.3(A)(2). Here, the NOIR advised the Petitioner of the deficiencies in the record regarding the source and the path of the funds, advised the Petitioner that the approval was therefore legally deficient, and provided the Petitioner an opportunity to overcome those deficiencies. The Petitioner's response that USCIS must rely on a previously deficient determination is not persuasive.

Second, the Petitioner's claims regarding the applicability of a general OFAC license are not responsive to the issues identified in the NOIR. Even were we to assume that the Petitioner's investment transactions were covered by a general OFAC license, this does not exempt the Petitioner from establishing the lawful source of his investment funds or sufficiently documenting the complete path of the funds into the NCE, to document that he invested or is actively in the process of investing in the NCE. 8 C.F.R. § 204.6(e); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195; *see also Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (holding that demonstrating a "complete path" of funds is USCIS' authoritative position recognized by other relevant precedent decisions). The NOIR advised the Petitioner of specific deficiencies in the evidence regarding these issues, for example, the lack of sufficient bank statements or other evidence to trace the funds from the Petitioner's Iranian account to the NCE, or to establish the lawful source of the funds used by the various third-party intermediaries through which the investment funds passed. The Petitioner's response in the NOIR was not responsive to these issues; instead, the Petitioner simply repeated the previously stated claims and asserted that he has established eligibility. On appeal, the Petitioner restates the same claims again. The Petitioner bears the burden to establish that he has invested or is actively in the process of investing in the NCE and the lawful source of those funds. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Here, the Petitioner has not made such a showing.

We determine that the Chief had good and sufficient cause to issue a NOIR because of the Petitioner's failure to satisfy the job creation requirements, the lawful source of the funds, or that the Petitioner has invested or is in the process of investing a sufficient amount of capital. Upon reviewing the Petitioner's NOIR response and the record in its entirety, we conclude that the Chief properly revoked the approval of the petition.

III. CONCLUSION

A NOIR was properly issued for good and sufficient cause because the evidence of record at the time of issuance, if unexplained and unrebutted, would warrant a denial of the approved visa petition based upon the Petitioner's failure to establish his eligibility. 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. Good and sufficient cause existed in this case when the Chief realized that the approval decision was made in error and that the underlying facts, upon which a favorable decision was made, have materially changed due to the closure of the job creating entity and the inability of the project to meet the job creation requirements. Accordingly, we affirm the Chief's revocation.

ORDER: The appeal is dismissed.