U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31478488

Date: FEB. 19, 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).[1] 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 (NCE) that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees. An alien may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish that the Petitioner's investment funds were obtained through lawful means and show the complete path of funds from Vietnam to the NCE's bank account. 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 withdraw the Chief's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. A noncitizen may invest the required funds directly in an NCE or through a regional

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in section 203(b)(5) of the Act, and adding significant new integrity provisions. As the Petitioner filed her petition prior to the enactment of the RIA, the relevant law then in existence governs this appellate adjudication.

center, as the Petitioner has done in this case. 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) (2019).

An alien investor must demonstrate that they have placed their own capital at risk in the NCE. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998) (stating that "[a] petitioner must . . . establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are [their] own"). In addition, the investor must show that their 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. at 210-11; *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] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

The Petitioner asserts that she invested $500,000[3] in [redacted] the NCE, which is associated with [redacted] The NCE proposes to pool up to $30,000,000 from 60 immigrant investors, funds which will be loaned to the job-creating entity, [redacted] (doing business as [redacted], for the development, construction and operation of new vehicle production lines within its automotive factory in [redacted] Alabama.

The Petitioner and her spouse submitted a joint statement indicating that her $500,000 investment was derived from the January 2019 sale of real property in Vietnam for 14,00,000,000 Vietnamese Dong (VND). The Petitioner states that they purchased the property in cash in 2014 using the proceeds of a VND 2,450,000,000 shareholder loan from [redacted] a Vietnamese company in which her spouse is a 40 percent owner. The record shows that to invest in the NCE and remit the VND funds outside of Vietnam, the Petitioner used the services of [redacted], an Australian money transfer company.

The Chief concluded, in part, that the evidence did not demonstrate: (1) the VND 2,450,000,000 loaned to the Petitioner's spouse was allocated from Viet Trung's business operations; and (2) the Petitioner and her spouse used these loan proceeds to purchase the three properties in 2014 for VND 2,450,000,000. The Petitioner contends that the Director did not adequately weigh the previously submitted evidence documenting the 2014 shareholder loan and property purchase. We agree. We conclude the Petitioner submitted sufficient relevant, probative, and credible evidence to establish, by a preponderance of the evidence, the lawful source of the funds Viet Trung loaned to her spouse. In addition, the record demonstrates that the Petitioner and her spouse, more likely than not, used the

[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 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).

VND 2,450,000,000 loan to purchase the real property in Vietnam in 2014, which they subsequently sold in 2019 to finance the EB-5 investment.

The Chief further concluded that the evidence did not show the exchange of the Petitioner's funds from VND to U.S. dollars, and did not show the complete path of the Petitioner's funds from her remittance of those funds to authorized agents of [redacted] to that company's transfer of $500,000 to the NCE's bank account. On appeal, the Petitioner submits additional explanation and evidence and asserts that the complete path of her funds has been demonstrated, as her funds did not leave Vietnam but were routed through [redacted] in a value transfer exchange.

Upon de novo review, we are remanding this case for the Chief to consider the additional evidence and arguments submitted on appeal and added to the record with respect to the value transfer exchange, and for the issuance of a new decision.

ORDER: The Chief's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.