U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15397709

Date: FEB. 23, 2024

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) (2019).[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 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 she placed at least $500,000[2] of her own capital at risk, and that she did not document the lawful source of the funds she claimed to have invested in [redacted], the NCE, which is associated with [redacted][3] On appeal, the Petitioner submits a brief as well as additional evidence, and maintains that she has shown her eligibility for the EB-5 classification.

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

A noncitizen 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 center, as the Petitioner has done in this case. Regional centers can pool immigrant

---

[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the EB-5 program, including the designation of targeted employment areas 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 her petition in September 2019, the relevant law then in existence governs this appellate adjudication.

[2] The Petitioner indicated 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) (2019).

[3] [redacted] is an entity that U.S. Citizenship and Immigration Services (USCIS) has designated to participate in the EB-5 program. 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) (2019).

(and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii) (2019).

A noncitizen 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 noncitizen 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.[4] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

In this case, the Petitioner claims to have invested at least $500,000 in the NCE. According to pages 3, 4 and 10 of the November 2017 business plan, the NCE seeks to solicit funds from noncitizen investors to lend to [redacted] to facilitate the development and operation of a hotel under the [redacted] hotel brand in [redacted]

The Petitioner explained in an August 2019 letter she initially submitted in support of the petition that her EB-5 capital derived from three sources: (1) her spouse and her "savings derived from income"; (2) "an increased security deposit for their property" ("101-1404 Property"); and (3) a loan "from [redacted] bank secured on [her] property" ("401-1402 Property"). She has submitted documents, including the couple's bank statements, property documents and certificates of income. The record includes a "Real Estate (Apartment) Lease Agreement," noting that [redacted] (the lessee) leased the 101-1404 Property from the Petitioner and her spouse (the lessors). The lessee paid the lessors 1,200,000,000 South Korean Won (KRW) in security deposit in 2016 and agreed to pay an additional KRW 100,000,000[5] in security deposit by July 2019. The Petitioner's bank records show that on July 29, 2019, she received KRW 100,000,000 from the lessee, and that the security deposit funded, in part, the $500,000 she wired to the NCE's escrow account as her EB-5 investment in August 2019.

The Petitioner has not demonstrated that the KRW 100,000,000 security deposit for the 101-1404 Property qualifies as EB-5 capital because she has not shown that she owned the funds. *See Matter of Ho*, 22 I&N Dec. at 213; *Matter of Soffici*, 22 I&N Dec. at 165 n.3; *see also* 8 C.F.R. § 204.6(e) (defining "capital"). On appeal, the Petitioner argues that "[she], as landlord, is akin to the borrower

[4] 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).

[5] The Petitioner indicated in an August 2019 letter from counsel that KRW 100,000,000 was approximately $82,250.

under a secured loan," because "South Korean law allows the Petitioner to use the [security deposit] as she saw fit, subject to the security interest in the property given to the tenant."

The Petitioner offers an August 2020 letter from Law Firm [redacted] a law firm in [redacted] South Korea, stating that the security deposit, known as "Jeonsegeum" or "key money," "has the character of equity capital as soon as the client [the Petitioner] and [her] husband receive it." The letter explains that under South Korean law, "it is entirely up to the [lessor] to decide how to use 'Jeonsegeum' during the contract period," but that "[t]he deposit is returned in full when the contract ends." The "Real Estate (Apartment) Lease Agreement" for the 101-1404 Property similarly specifies that the lease term was 41 months, between June 2019 and December 2022, and that at the end of the lease term, the lessor "shall" return the security deposit to the lessee. The August 2020 letter from Law Firm [redacted] provides that if the lessor "does not return the 'Jeonsegeum' even after the end of the contract period, [the lessee] . . . has the right to apply for an auction for the real property to recover 'Jeonsegeum' from the proceeds from sale." The record includes a May 2020 letter from [redacted] Law, another law firm in [redacted] South Korea, stating that the security deposit "can be seen as a form of secured debt," because "Korean Civil Act grants the right to request an auction of the real estate subject to Chonse-gwon to the tenant so that the tenant, a person with Chonse-gwon, can smoothly secure the security interest in the real estate." The letter explains that "Chonse-gwon" means "right to lease on a deposit basis."

The ownership of the Petitioner's purported EB-5 capital deriving from the security deposit for the 101-1404 Property is a matter of foreign law. When relying on foreign law to establish eligibility, the application of foreign law is a question of fact which must be proved by the petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). In this case, the record does not establish that the Petitioner owned the security deposit before remitting it to the NCE's escrow account as her EB-5 capital. Rather, the documentation, including the "Real Estate (Apartment) Lease Agreement," specifies that she must return the security deposit to the lessee at the end of the 41-month lease term. While the "Real Estate (Apartment) Lease Agreement" and the South Korean law do not specifically prohibit the Petitioner from using the security deposit during the lease term, the evidence does not establish that she has ever owned the funds as she must return them when the lease term ends.

Additionally, although the Petitioner has submitted her and her spouse's certificates of income, listing their "Wage & Salary Income" and "Global Income" for multiple years, she has not submitted certificates showing that the KRW 1,200,000,000 security deposit she and/or her spouse received in 2016 or the KRW 100,000,000 additional security deposit she received in 2019 qualified as their income. The lack of such evidence does not support her contention that she has ever owned the funds, or that her remittance of the security deposit to the NCE's escrow account qualifies as investment of her own capital. *See Matter of Ho*, 22 I&N Dec. at 213; *Matter of Soffici*, 22 I&N Dec. at 165 n.3.

Furthermore, the record lacks documents executed between the Petitioner and/or her spouse and the lessee demonstrating that they were or are in a borrower-lender relationship or that the security deposit for the 101-1404 Property qualifies as proceeds of a secured loan. Indeed, while both the August 2020 letter from Law Firm [redacted] and May 2020 letter from [redacted] Law discuss the lessee's right to request an auction of the property, the letters and other evidence in the record are insufficient to confirm the property guarantees the full repayment of the security deposit. *See* 8 C.F.R. § 204.6(e)

(defining "capital"). In support of the petition, the Petitioner has submitted articles about "Jeonsegeum," including a 2019 article posted on airshare.air-inc.com, entitled "Housing in South Korea: a Variety of Ways to Pay." The 2019 article provides that a lessor usually "takes the large deposit ['Jeonsegeum'], invests it, and keeps all the interest earned on the sum" and that the lessee's deposit is "protected by having a lien issued against the property for the amount given." However, the article states that in some cases, the lessee might "lose some or all of their deposit," if the lessor "owe[s] the government" in overdue taxes and the government "put[s] the [property] up for auction to collect overdue taxes." The Chief similarly noted in the denial that the repayment of the security deposit in its entirety is not guaranteed because if a lessor does not return the security deposit at the end of the lease term, "the lessee has some optional legal recourse . . . , depending on the seniority and the amount of other creditors' claims on the property . . . ."

Based on these reasons – including the Petitioner's failure to show (1) her ownership of the security deposit, (2) she and/or her spouse and the lessee are in a borrower-lender relationship, and (3) the 101-1404 Property guarantees the full repayment of the security deposit – the Petitioner has not established that her remittance of the KRW 100,000,000 security deposit to the NCE's escrow account qualifies as her EB-5 investment capital. *See* 8 C.F.R. § 204.6(e) (defining "capital").

Moreover, even if the Petitioner had shown that the security deposit she remitted to the NCE's escrow account qualified as her EB-5 investment capital, we would nonetheless conclude that she had not documented the lawful source of her purported $500,000 EB-5 investment. *See* 8 C.F.R. § 204.6(e), (j)(3). First, the Petitioner has not shown the lawful source of the funds her spouse used to purchase the 101-1404 Property. The Petitioner has submitted a "Real Estate Sales Contract" showing that her spouse paid KRW 1,637,000,000 to purchase the 101-1404 Property in 2016. Another document, entitled "Housing Payment Confirmation," indicates that her spouse paid KRW 50,000,000 on May 20, 2016; KRW 277,400,000 on October 31, 2016; and KRW 1,309,600,000 on October 30, 2016, for the property. The record lacks sufficient evidence, such as bank or financial statements, confirming the lawful source of these payments. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

Second, the Petitioner has not shown the lawful source of funds she used to purchase the 401-1402 Property that secured the KRW 232,000,000 loan she obtained from [redacted] Bank, the proceeds of which she remitted to the NCE's escrow account as her EB-5 investment.[6] The Petitioner has submitted "Certificate of All Registered Matters (including Lapsed Information)" and [redacted] Contract," showing that she purchased the 401-1402 Property for KRW 465,410,000 in 2006, and made multiple payments between 2006 through 2009. The record, however, lacks sufficient documentation, such as bank or financial statements, confirming the lawful source of these payments. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

Third, the Petitioner has not shown that savings financed, in part, her EB-5 investment. The Petitioner claims that part of her EB-5 investment derived from KRW 330,634,860 of her and her spouse's savings.[7] A bank statement shows that she received a KRW 330,634,860 deposit on July 23, 2019. While the record includes other bank statements for the couple's accounts covering various periods

[6] The Petitioner indicated in an August 2019 letter from counsel that KRW 232,000,000 was approximately $190,821.
[7] The Petitioner indicated in an August 2019 letter from counsel that KRW 330,634,860 was approximately $271,948.

between 2014 and February 2019, the Petitioner has not submitted sufficient evidence tracing the July 2019 deposit of KRW 330,634,860 to a lawful source. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. For example, she has not presented evidence, such as bank or financial records, covering the period between February 2019 and July 2019 that confirms the lawful source of the July 2019 deposit. Although the Petitioner has offered her and her spouse's certificates of income listing their " Wage & Salary Income" and "Global Income" for multiple years, evidence of income, without more, is insufficient to establish how much of their income the couple retained or saved in their accounts.

In short, the Petitioner has failed to establish the lawful source of the funds her spouse used to purchase the 101-1404 Property, associate with the KRW 100,000,000 security deposit; the lawful source of the funds she used to purchase the 401-1402 Property, associated with the KRW 232,000,000 bank loan; or the lawful source of the KRW 330,634,860 she received in July 2019. As she claims that these transactions financed her EB-5 investment, she has not sufficiently demonstrated that her investment capital did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e).

III. CONCLUSION

For the reasons we have discussed above, we conclude that the Petitioner has not established, by a preponderance of the evidence, her eligibility for the classification. It is her burden to demonstrate her eligibility for the EB-5 classification, which includes establishing she owned the funds she remitted to the NCE's escrow account and the lawful source of her purported EB-5 investment. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Here, the Petitioner has not made such a showing.

ORDER: The appeal is dismissed.