U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36388920

Date: FEB. 24, 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 foreign nationals 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. Foreign nationals may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, section 610, as amended by section 575 of Pub. L. No. 114-113 (2015).

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish (1) that the capital, which has been invested by the Petitioner or which the Petitioner is actively in the process of investing, is capital obtained through lawful means and (2) that the required minimum amount of capital has been invested or is actively in the process of being invested. 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 NCE. *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 indicated on page 6 of his petition that on November 7, 2019, he invested $500,000[1] into [redacted] (NCE), which is sponsored by [redacted] and [redacted].[2] According to the Confidential Private Placement Memorandum, dated 2019, the NCE proposes to raise $31,500,000 from 63 immigrant investors and lend the entire amount to [redacted] the job-creating entity (JCE). The JCE intends to develop and construct two subprojects: (1) the [redacted] Subproject, which consists of a 4-story, class-A, office facility, which will serve as an expansion of the headquarters campus of [redacted] an oncology-focused biotechnology company, to be constructed on 5.12 acres of land in [redacted] California, and will total approximately 220,000 square feet, and (2) the [redacted] Subproject, which consists of a class-A speculative warehouse facility to be constructed on 94.3 acres of land in [redacted] Pennsylvania.

The Petitioner asserted that he derived his investment funds through three sources: (1) a loan of $444,506.42 from [redacted] doing business as [redacted] secured by a real property in [redacted] Florida, (2) rental income of $25,493.58 from various real properties in Florida, and (3) a gift of $30,000 from his cousin, [redacted]

The Chief questioned the claimed lawful source of the $500,000 invested in the NCE. Specifically, the Chief determined that the Petitioner has not shown by a preponderance of the evidence that the collateral for the $444,506.42 mortgage loan, the $30,000 gift, and the $25,493.58 rental income derive, directly and indirectly, from lawful means. The Chief also determined that the Petitioner has not sufficiently documented the path of funds because he has not sufficiently traced the path of funds for (a) the U.S. dollars to purchase the collateral for the mortgage loan, (b) the possibly commingled funds in his, his spouse, and his mother's joint bank account from which the funds were transferred to the NCE's escrow account for his EB-5 investment, and (c) the $30,000 gift from his cousin.

On appeal, the Petitioner presents a brief and additional evidence and contends that the Chief erred in finding that he has not established the lawful source and documented the path of funds. We conclude that the record lacks sufficient evidence to support the claimed lawful sources and the claimed path of funds purportedly invested in the NCE for the reasons we will discuss below.

First, the Petitioner has not shown by a preponderance of the evidence that the loan proceeds of $444,506.42 derive from lawful means because the funds used to purchase the real property, which was used as collateral for the loan, have not been sufficiently shown to derive from lawful means. *See* 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. The record reflects that in November 2019, the Petitioner obtained a refinancing loan of $471,250 from [redacted]

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[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. *See s*ection 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner had filed his petition in 2019 and asserted that the NCE is principally doing business in an area of high unemployment that qualifies as a targeted employment area (TEA). Therefore, the requisite amount of capital investment was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2019).

[2] [redacted] and [redacted] are USCIS designated regional centers to participate in the EB-5 program. *See* 8 C.F.R. § 204.6(e) (defining a "regional center").

secured by a real property located at Florida (the property). The Petitioner purchased the property in 2017 for $601,170. The Petitioner claimed that he purchased the property using (a) the sale proceeds of $193,916 from the sale of another real property located at Florida (the property), (b) rental income of $57,147 from various real properties in Florida, and (c) business income of $250,000 from his company, in Venezuela. The record reflects that the Petitioner purchased the property for $115,000 in 2010 and sold it for $200,000 in 2017. The Petitioner further claimed that he purchased the property using his business income from

On appeal, the Petitioner asserts that he accumulated more than sufficient income to purchase the property because from 2004 to 2019, he generated a total revenue of $18,448,052 and earned a total income of $13,979,005. However, he does not offer sufficient evidence to substantiate this claim. The record includes income tax returns of from 2016 to 2018, which show that net profit was 147,068,470 Venezuelan bolivares (VEF) in 2016, VEF 328,371,305 in 2017, and VEF 880,130,655 in 2018. While the Petitioner provided some documentation showing that as of 2016, he was the president and a majority shareholder of , a corporation and an individual are two separate legal entities. *Matter of Soffici*, 22 I&N Dec. 158, 162 (Assoc. Comm'r 1998). As such, the net profit generated by does not establish the Petitioner's income. The record also includes the Petitioner's income tax returns filed with the Venezuelan tax authority for 2016 and 2017, which indicate that the Petitioner's taxable income was VEF 107,863,002 in 2016 and VEF 189,767,800 in 2017. However, the record does not contain evidence of the Petitioner's business income prior to his purchase of the property in 2010, evidence showing that his business income from was accumulated and maintained in his bank accounts, or evidence to establish that his accumulated business income from was used to purchase the property as claimed.

The Petitioner claims that wired his rental income of $57,147.93 directly to the settlement agent for the purchase of the property. However, the record does not contain a property management agreement, lease agreements, rent receipts, rent ledger, bank statements, or other sufficient evidence to support the claim that the Petitioner's rental income was used in part to purchase the property. The Petitioner has not established the claimed fact with unsupported testimonial evidence alone. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972) and stating that simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings).

Second, the rental income from various real properties in Florida has not been shown to derive from lawful means because the funds used to purchase the real properties have not been sufficiently shown to derive from lawful means. *See* 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. The record contains deeds and settlement statements for six real properties in Florida, which show that the Petitioner and his mother, purchased various residential real properties in Florida from 2010 to 2017. The Petitioner claims that he purchased these properties using his accumulated income and that he used to manage these properties, but he does not offer sufficient documentary evidence to support these assertions. He states that , the property manager, had written agreements with each tenant for all of the properties, but the Petitioner is no longer in business with him, Mr. did not retain records of his past clients,

and he is not willing to provide any further documentation or disclose any financial records related to the business.

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). While the Petitioner claims that he purchased various real properties using his accumulated income, the record lacks complete bank statements, income tax returns for the relevant periods, or other sufficient evidence to support this claim. The Petitioner provided his and his mother's U.S. nonresident alien income tax returns from 2016 to 2020, which show that he and his mother had rental income from several real properties in Florida and reported this rental income to the Internal Revenue Service. However, he has not provided complete bank statements or other sufficient evidence to show that this rental income was accumulated and maintained in their bank accounts and that this accumulated rental income was used for Petitioner's EB-5 investment. The Petitioner also provided copies of three checks for a total amount of $38,867 issued by [redacted] to the Petitioner in October and November 2019, but the record lacks a property management agreement, lease agreements, rent receipts, rent ledger, or other sufficient evidence to support that these checks were for rent payments.

Third, the Petitioner has not established by a preponderance of the evidence that the gift of $30,000 from his cousin, [redacted] derive from lawful means because the funds used by the cousin to gift to the Petitioner have not been sufficiently shown to derive from lawful means. *See* 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. The Petitioner's cousin claimed that he obtained the gift funds through his business income from [redacted] as the owner and president of the company. The Petitioner submitted bank statements showing that on November 6, 2019, his cousin transferred $30,000 from his [redacted] bank checking account to the Petitioner's bank account. The bank statements also show that on November 6, 2019, the cousin transferred $30,000 from his [redacted] saving account to his checking account – immediately prior to the transfer of the $30,000 to the Petitioner's account. But the record does not sufficiently identify the source of this deposit.

On appeal, the Petitioner offer a statement from an independent public accountant in Venezuela, dated 2024, which states that the Petitioner's cousin as the president and director of [redacted] makes dividend withdrawals in compliance with the use of its functions as established by the Commercial Code whenever it so requires and permitted by the company. To show the lawful source of the funds, a petitioner must submit evidence, such as foreign business and tax records or other documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(j)(3). While the accountant claims that the cousin's withdrawals of dividends from [redacted] conform with the Commercial Code, the Petitioner has not provided the claimed Commercial Code or other sufficient evidence to support this claim. 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). *See also Matter of Hsiung*, 22 I&N Dec. 201, 203-04 (Assoc. Comm'r 1998) (finding that the petitioner has not presented any evidence as to Taiwanese law regarding the seizure of assets).

In addition, the Petitioner has not provided the Articles of Organization or other sufficient evidence to establish that the claimed dividend payments are allowable per the company's rules. Moreover, the Petitioner has not submitted shareholders resolutions of [redacted] or other sufficient evidence to

demonstrate that the claimed dividend distributions have been authorized as a lawful corporate action. While the Petitioner submitted business registration record and income tax returns of [redacted] from 2018 to 2020, which support the claimed lawful business activities of [redacted] the record lacks bank statements or other sufficient evidence to support the claimed dividend payments and accumulation and maintenance of these dividend payments in the cousin's bank accounts until these funds were purportedly gifted to the Petitioner in November 2019. Furthermore, the Petitioner has not demonstrated that the dividends his cousin received from [redacted] derived from lawful means because the funds used by the cousin to acquire ownership interests in [redacted] have not been shown to derive from lawful means. The Petitioner states that his cousin does not want to get any further involvement with USCIS and his case. However, a petitioner must demonstrate by a preponderance of the evidence that the capital was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210.

Fourth, the claims that the invested funds were not only derived from lawful means but that they were also accumulated and maintained without being comingled with funds not shown to derive from lawful means have not been shown by a preponderance of the evidence. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. The Petitioner submitted bank statements of a [redacted] bank account jointly owned by the Petitioner, his spouse, and his mother. These bank statements show deposits of the loan proceeds of $444,506.42 on November 4, a deposit of $38,867 for the claimed rent payments on November 6, a deposit of the $30,000 gift from the Petitioner's cousin on November 6, and a withdrawal of $550,000 for the Petitioner's EB-5 investment on November 7, 2019. However, the bank statements also show withdrawals of $1,620 on November 4 and deposits of $8,800 on November 5 and deposits of $17,500 on November 7, 2019 from unknown sources.

The record does not sufficiently identify the source of the U.S. dollars deposited into the Petitioner's [redacted] bank account. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195 (holding that a petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the NCE and that the record must trace the path of the funds back to a lawful source). *See also Borushevskyi v. United States Citizenship and Immigration Services*, 664 F.Supp.3d 117, 128-29 (D.C.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (stating that USCIS' complete path interpretation of the regulations is its authoritative position as explained in the 1998 precedential decisions and that these decisions require the petitioner to establish the complete path of funds to demonstrate that the funds were obtained through lawful means). Here, the Petitioner has not traced the path of his investment funds to a lawful source.

Because the Petitioner is ineligible for the immigrant investor visa classification for the reasons we have discussed above, we need not address, and therefore reserve, the Chief's other ground for denial, the Petitioner's alleged failure to establish that the required minimum amount of capital has been invested or is actively in the process of being invested. *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).

III. CONCLUSION

The Petitioner has not adequately documented the claimed lawful sources of his investment funds. *See* 8 C.F.R. §§ 204.6(e), (j)(3); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec.

at 195. Specifically, the record lacks sufficient evidence to establish that the funds used by the Petitioner to purchase the real property, which was used as collateral for the refinancing loan, have been derived from lawful means. In addition, the Petitioner has not provided sufficient evidence showing that the funds gifted by his cousin derived from the cousin's accumulated business income from [redacted] Moreover, the Petitioner has not established by a preponderance of the evidence that that the funds used by the Petitioner and his mother to purchase various real properties in Florida and the rental income from these real properties derived from lawful means. Lastly, the claims that the invested funds were not only derived from lawful means but that they were also accumulated and maintained without being comingled with funds not shown to derive from lawful means have not been shown by a preponderance of the evidence. As the record does not sufficiently demonstrate that the funds invested by the Petitioner have been obtained through lawful means, we conclude that the Petitioner has not established eligibility for the immigrant investor visa classification.

ORDER: The appeal is dismissed.