U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18802080

Date: FEB. 26, 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) (2017). This fifth preference classification makes immigrant visas available to noncitizens who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees. Noncitizens 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, 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 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. The matter is now before us on appeal. 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 sustain 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 his or her 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 his or her own, a petitioner must document the path of the funds. *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. *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 her petition that on May 24, 2018, she invested $500,000[1] in [redacted] the new commercial enterprise (NCE), which is associated with the [redacted] pursuant to the Immigrant Investor Pilot Program. According to the Amended and Restated Confidential Private Placement Memorandum (PPM) of the NCE, the NCE proposed to pool $250,000,000 from 500 immigrant investors and lend the entire amount to [redacted] which in turn will use the proceeds to make a capital contribution to [redacted] the job-creating entity (JCE). The PPM further indicates that the JCE will use the capital contribution to construct and develop or repay bridge or interim financing related to the development of a 72-story residential condominium tower, to be known as [redacted] located at [redacted] New York.

The Petitioner asserted that she derived her investment funds through a loan of 12,800,000,000 Vietnamese dong (VND) from Saigon Ha Noi Commercial Joint Stock Bank secured by a real property located in [redacted] Vietnam. The Petitioner and her spouse, [redacted] purchased the property in June 2004 for VMD 70,000,000. The Petitioner claimed that they purchased the property using their accumulated business income from their household business selling wooden furniture from 1991 to 2004, that from 2002 to 2004, their annual income was about VND 30,000,000, and that at the end of 2004, they accumulated over VND 150,000,000.

To support their claimed accumulated business income, the Petitioner submitted statements from her spouse, a statement from an individual who claimed that he has been trading furniture with the Petitioner's spouse since 2000, a statement from a neighbor who claimed that he has witnessed the Petitioner and her spouse's business since 2001, and photos of furniture, a warehouse or a storage, and a storefront of a business named [redacted] The Chief found that these statements and photos were insufficient to demonstrate the Petitioner's income and requested for additional corroborating evidence, such as social insurance payments, declaration of enterprise income taxes from 1991 to 2004, remittance papers to the State Budget from 1991 or 2004, or a statement or record from the Vietnamese tax authority if such evidence no longer existed.

In response to the request for evidence (RFE), the Petitioner submitted a statement from an individual who claimed to be a business partner of their wood furniture business and supporting documents regarding the individual's business. The Petitioner also submitted Decree No. 174/2016, which elaborates some Articles of the Law on Accounting and issued by the Government of Vietnam in 2016. Article 12 of Decree No. 174/2016 states that accounting records that are not directly recorded in accounting books and financial statements, such as collection notes and payment notes, can be destroyed after five years. Article 13 of Decree No. 174/2016 states that accounting records directly recorded in accounting books and financial statements can be destroyed after 10 years. The Petitioner argued that Article 13, which states legal requirements for general accounting records retention are 10

[1] On March 15, 2022, President Joe Biden signed the EB-5 Reform and Integrity Act of 2022, which made significant amendments to the EB-5 program, including the designation of a targeted employment area (TEA) and the minimum investment amounts. *See* section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner filed her petition in 2018 and indicated that the project is located within a TEA. Therefore, the requisite amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2015).

years, speaks to the unavailability of the Petitioner and her spouse's business and income records from 1991 to 2004.

The Chief found that the Petitioner has not submitted primary evidence of their accumulated business income, has not demonstrated that primary evidence does not exist or is unavailable, has not submitted secondary evidence establishing the source of her investment funds, has not submitted two or more affidavits that comply with the requirements for a legal affidavit, and, therefore, has not complied with the requirement under 8 C.F.R. § 103.2(b)(2)(i) to document the source of funds.

On appeal, the Petitioner contends that the Chief did not adequately consider the evidence provided and incorrectly applied an evidentiary standard greater than the required preponderance of the evidence standard. The Petitioner presents a legal consultation letter from a legal representative of [redacted] which provides legal opinion regarding Decree No. 175/2016. The Petitioner also presents her statement, a certificate of business registration of [redacted], which was registered in September 2004, and a tax registration certificate of [redacted], which was registered in November 2004. In addition, the Petitioner provides Decree No. 39/2007, which was issued by the Government of Vietnam in 2007. Decree No. 29/2007 states that individuals who conduct commercial activities independently and regularly are not subject to business registration in accordance with the law on business registration.

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 375. The "preponderance of the evidence" standard requires that the evidence demonstrate that the petitioner's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *See id.* at 376. In evaluating the evidence, "truth" is to be determined not by the quantity of evidence alone but by its quality. *See id.* Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, the Chief must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *See id.* Even if the Chief has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the Chief to believe that the claim is "more likely than not" or "probably" true, the petitioner has satisfied the standard of proof. *See id.* If the Chief can articulate a material doubt, it is appropriate for the Chief to either request additional evidence or, if that doubt leads the Chief to believe that the claim is probably not true, deny the petition. *See id.*

The Petitioner claims on appeal that it is practically impossible to get the Vietnamese tax authority to write an individual letter stating the government does not have records from 1991 to 2004 and then explain why. In her statement, the Petitioner explains that they have made efforts to obtain the required documents, but they could not meet the requirement because the government office does not have information that the Chief requires and does not issue a letter to address that they do not have that information. The Petitioner further explains that according to the government office, it is not necessary to issue a letter if they do not have the record in their system and that the government in Vietnam does not simply answer to individual inquiries or calls.

The Petitioner did not provide additional corroborating evidence of their accumulated business income from their wood furniture business requested by the Chief, such as social insurance payments, declaration of enterprise income taxes from 1991 to 2004, or remittance papers to the State Budget from 1991 or 2004, to establish that they accumulated over VND 150,000,000 from 1991 to 2004 from their wood furniture business. She only provided statements from her spouse, a business partner, a neighbor, and a business customer, and photos of their claimed business. The certificates of business and tax registrations show that that the Petitioner and her spouse did not register their wood cabinets manufacturing and processing business until 2004. The Petitioner's spouse stated that all transaction were done in cash, that they did not register their business with the government authority because of the nature of their business and small scale of the business, and that they have not kept documents related to their business because it was over 15 years ago. The Petitioner added that they worked as a freelancer or a broker to connect the buyer and seller in the wood industry and earned money from the differences in prices and commissions from their customers.

Without corroborating documentary evidence, we have some doubt as to the claim that the Petitioner and her spouse accumulated over VND 150,000,000 from 1994 to 2004 from their wood furniture business. However, a review of detailed statements from the Petitioner and her spouse regarding their wood furniture business and inability to obtain the requested documents from the government office, corroborating statements from a business partner, a neighbor, and a business customer regarding their business, photos of their claimed business, and business and tax registrations of their wood cabinets manufacturing and processing business in 2004, when considered individually and within the context of the totality of the evidence, leads us to believe that the claim that the Petitioner and her spouse purchased the property in 2004 for VND 700,000,000 using their accumulated business income from their wood furniture business is more likely than not or probably true. Moreover, although Decree No. 39/2007, which governs business registration requirements for commercial activities, was not issued until 2007, and Decree No. 174/2010, which governs retention of accounting documents for State agencies, companies, enterprises, and other agencies, was not issued until 2016, these Decrees support that additional corroborating evidence requested by the Chief are not reasonably available to the Petitioner.

III. CONCLUSION

The record contains sufficient evidence to demonstrate 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. Therefore, the Petitioner has established by a preponderance of the evidence her eligibility for the immigrant investor visa classification.

ORDER: The appeal is sustained.