U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 05168304

DATE: FEB. 28, 2020

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 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 eligibility for the EB-5 classification. Specifically, the Chief determined that the Petitioner did not document the lawful source of the funds she remitted to [redacted], the NCE, whose general partner is [redacted] Regional Center (the Regional Center), a United States Citizenship and Immigration Services (USCIS) designated regional center.[1] In addition, the Chief determined that the Petitioner made impermissible material changes to her petition. On appeal, the Petitioner submits additional evidence and maintains that she has shown eligibility for the EB-5 classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

A foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in a NCE. The foreign national must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. An immigrant investor may invest the required funds directly in an NCE or through a regional center. Regional centers apply for designation as such with USCIS. Designated regional centers identify and work with NCEs, which in turn are associated with a specific investment project taken on either directly by the NCE, or by one or more separate entities known as the "job creating entity" (JCE).

[1] 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).

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).

II. ANALYSIS

The Petitioner indicates that she had invested $500,000 in the NCE. According to pages 6 through 9 of the July 2016 business plan, the NCE seeks to raise up to $15,000,000 EB-5 funds from 30 foreign national investors to loan to [redacted] the JCE. The JCE plans to use the EB-5 capital and other funds for "the development, construction and subsequent operation of [redacted] in [redacted] New York. Upon construction completion, the project, known as the [redacted] Project, will be a "25-story building" with "182 residential units" and "12,462 [square feet] of retail space."

The record includes a copy of a check, dated August 11, 2016, indicating that [redacted] whom the Petitioner has referred to as "an agent," "an exchanger," and "a friend," issued a $500,000 check to the Regional Center. [redacted] wrote on the memo line of the check "EB5 Investment fund-[the Petitioner]." In an August 2016 letter, the Regional Center acknowledged the receipt of the funds as the Petitioner's EB-5 investment in the [redacted] Project. The Petitioner has submitted a copy of another check, dated August 15, 2016, showing that the Regional Center issued a check to the NCE, noting "Capital Contribution to LP – [the Petitioner]" on the memo line. As we will explain below, we find that the Petitioner has not established, by a preponderance of the evidence,[2] her eligibility for the classification. Specifically, she has not documented the lawful source of her funds.

A. Lawful Source of Funds

To be eligible for the EB-5 classification, a petitioner must establish, among other requirements, that his or her invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e) (defining capital). To show the lawful source of the funds, an investor must submit, for example, foreign business and tax records or documentation identifying any other sources of funds. 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. *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.[3] *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

In this case, the Petitioner alleges that her EB-5 capital derived from a 3,500,000 renminbi (RMB or Yuan) loan that she and her spouse, [redacted] obtained from [redacted] in June 2016. The Mortgage Contract indicates that the loan is secured by the couple's property in [redacted] China.

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[2] If a petitioner submits relevant probative, and credible evidence that leads USCIS to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof *Matter of Chawathe*, 25 T&N Dec. 369, 376 (AAO 2010); *see also 6 USCIS Policy Manual* G.2(E), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[3] 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).

The record shows that in 2004, the couple paid RMB 315,905 as a down payment and relied on two mortgage loans of RMB 260,000 and RMB 240,000, respectively, to purchase the property. The RMB 260,000 mortgage loan was fully repaid on July 4, 2006, while the remaining mortgage loan was settled on June 10, 2015. The Petitioner has presented certificates verifying her and [redacted]'s employment and earnings.

The record includes inconsistent evidence relating to [redacted]'s work history and income, which the Petitioner claims had partially financed the purchase of the property that secured the RMB 3,500,000 loan, the proceeds of which she remitted to the NCE. [redacted]'s resume[4] indicates he worked for [redacted] Bureau of Finance after graduating from university in 1998, joined the organizing committee of the [redacted] Olympic Games as HR manager in 2013, and joined [redacted] Bank as principal for the HR Department in July 2015. However, in a separate nonimmigrant visa application filed in 2016, [redacted] indicated that he had not been employed anywhere other than his present employer, [redacted] Commercial Bank.

Since the record includes inconsistencies relating to [redacted]'s employment history and earnings, "it is incumbent upon the [P]etitioner to resolve the inconsistencies by independent objective evidence" and that "[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In her attempt to resolve the inconsistencies, the Petitioner submitted a statement from [redacted], two Income Certifications claiming [redacted] worked at [redacted] Bank from 2015 to 2016 and [redacted] Credit Union from 2017 to 2018, and [redacted]'s Individual Income Tax Certificate for years 2016 - 2018. According to [redacted]'s September 2018 statement, he worked at Department of Finance of [redacted] from August 1998 to May 2004 and in State-owned Assets Supervision and Administration Commission of [redacted] from June 2004 to December 2010 but was unable to obtain income certificates from these employers due to the passage of time. He also claims the [redacted] Olympic Games Organizing Committee was a temporary institution where he worked as an unpaid volunteer and thus did not declare this position as past employment in his nonimmigrant visa application.

These assertions do not resolve the inconsistencies because the Petitioner did not submit any evidence to corroborate [redacted]'s claimed employment history and salary from 1998 – 2015, which is the time period when the Petitioner and [redacted] purchased the property in question and repaid the mortgage loan. Unsubstantiated assertions from the Petitioner or her spouse do not constitute "competent objective evidence pointing to where the truth, in fact, lies." *See Ho*, 19 I&N Dec. at 591-92. We have reviewed all the documents in the record, including those the Petitioner presents on appeal, and conclude that they do not reconcile the inconsistencies in the record concerning [redacted]'s employment and income prior to 2016.

[4] The Petitioner submitted this document under Appendix B5 in her initial filing.

As the Petitioner has not demonstrated that the funds used to purchase the property that secured the loan that formed the basis for the instant investment derived from a lawful source, we need not address the Chief's concerns with the manner in which the money was transferred to the NCE. [5]

III. CONCLUSION

The Petitioner has not demonstrated, by a preponderance of the evidence, that at the time she filed the petition, she "ha[d] invested or [was] actively in the process of investing" or had actually committed at least $500,000 of her own funds in the NCE. 8 C.F.R. § 204.6(g)(1); *see also* 8 C.F.R. § 204.6(j)(2); *Soffici*, 22 I&N Dec. at 164-65 n.3. In addition, she has not documented the lawful source of the funds she remitted to [redacted] which she claims financed her EB-5 investment in the NCE.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

[5] Similarly, as the Petitioner has not established eligibility under 8 C.F.R. § 204.6(j)(3), we will not address the Chief's additional finding that the Petitioner made material changes to her petition.