U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Q-S-

DATE: JAN. 5, 2017

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: FORM I-526, IMMIGRANT PETITION BY ALIEN ENTREPRENEUR

The Petitioner seeks classification as an immigrant investor based on her investment in a food export and wholesale company. *See* Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5). This fifth preference classification makes immigrant visas available to foreign nationals who invest the requisite amount of qualifying capital in a new commercial enterprise 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 had not demonstrated the lawful source of her funds.

The matter is now before us on appeal. In her appeal, the Petitioner submits additional evidence and maintains that the record now establishes the lawful source and complete path of her invested funds. We issued a request for evidence (RFE) as the record contained insufficient information to demonstrate that Beyond Connection, Inc., the new commercial enterprise (the NCE), is likely to create the necessary jobs. In response, the Petitioner provided a statement and evidence relating to the NCE's payroll, leased facilities, and on-going business activities.

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 new commercial enterprise. The commercial enterprise can be any lawful business that engages in for-profit activities. 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. This job creation should occur within two years of the foreign national's admission to the United States as a conditional permanent resident. Specifically, section 203(b)(5)(A) of the Act, as amended, provides that a foreign national may seek to enter the United States for the purpose of engaging in a new commercial enterprise:

(i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and

(ii) which will benefit the United States economy and create full time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

Finally, the regulation at 8 C.F.R. § 204.6(j)(4)(i) provides the following requirements for job creation:

To show that a new commercial enterprise will create not fewer than ten (10) full time positions for qualifying employees, the petition must be accompanied by:

(A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or

(B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

II. ANALYSIS

The Petitioner filed the Form I-526, Immigrant Petition by Alien Entrepreneur, based on her $500,000 investment in the NCE.[1] According to the business plans in the record, the NCE exports dried fruits and nuts from the United States to China and also markets these products in the United States and online. The Petitioner stated that she obtained her investment funds as a gift from her mother, [redacted] who owns [redacted] loaned her 3,500,000 in Chinese Renminbi currency (RMB). She assigned these funds to the [redacted] in order to obtain a loan of 4,000,000 Hong Kong dollars (HKD), which she ultimately converted to $515,663 and gifted to the Petitioner.

[1] The NCE does business in a targeted employment area (TEA); therefore, the minimum investment amount is $500,000. 8 C.F.R. § 204.6(f). While the letter the Petitioner offered designating the location of the NCE as a TEA is dated almost two years after the filing date of the petition in 2013, the [redacted] was a TEA at that time based on 2013 data. *See* http://www.eb5-circ.com/upload/20140612184240.pdf, accessed July 19, 2016, and incorporated into the record of proceeding.

The Chief concluded that the Petitioner had not resolved which of two documented loans, one from or the one from the served as the source of the funds transferred to the Petitioner. The Chief also noted that the Petitioner's mother is not mentioned on the loan document. On appeal, the Petitioner states that transferred the loan proceeds to a account assigned to in exchange for the Hong Kong dollar loan that served as the source of the funds she gifted to the Petitioner. The Petitioner affirmed that the latter loan "was executed solely for the purpose of being able to transfer the amount of HKD 4,000,000 to U.S. Currency $515,663 due to the strict Chinese Banking Laws governing international money wire transfers."

A. Source of Funds

A petitioner cannot corroborate the lawful source of funds merely by submitting bank letters or statements reflecting the deposit of funds. Without documentation of the path of the funds, the Petitioner cannot meet her burden of showing that the funds are her own funds. Affirmations, unsubstantiated by supporting evidence, are insufficient to satisfy the Petitioner's burden of proof. These requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin. *See Matter of Ho*, 22 I&N Dec. 206, 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998); *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'l Comm'r 1972)); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (upholding a finding that a petitioner had not established the lawful source of her funds due to the absence of five years of tax returns).

The record before the Chief included corporate materials pertaining to transactional exhibits tracing money from account to her account, from account to the Petitioner's account, and from the Petitioner's account to the NCE's account. The Petitioner also provided loan documents for both loans from and as well as a board resolution authorizing the loan.

The Petitioner has satisfactorily responded to the Chief's concerns with the new materials she provided on appeal. The documentation lists as the borrower. Moreover, the Petitioner has clarified that the RMB funds from the loan served as security for the credit line with the from which drew Hong Kong dollars to exchange for U.S. dollars to gift to the Petitioner. The new evidence includes documentation tracing the funds from to Accordingly, we will withdraw the Chief's sole stated ground for denial. Nevertheless, the Petitioner has not demonstrated eligibility for the benefit sought, as we will further explain.

B. Job Creation

The record did not contain sufficient information to demonstrate that the NCE is likely to create the necessary jobs. In our RFE we noted that while the Petitioner need not demonstrate the creation of all 10 jobs at this stage, the relevant regulation requires specific evidence of the jobs created so far and a credible business plan, establishing the NCE's need for not fewer than 10 jobs. 8 C.F.R. § 204.6(j)(4)(i); 8 C.F.R. § 216.6(a)(4)(iv); *see also* Section 216A of the Act, 8 U.S.C. § 1186b; *Ho*, 22 I&N Dec. at 210-11.

The NCE is focused on the acquisition, packaging, and resale of U.S.-grown dried fruit and nuts. These food products are marketed under the NCE's trademarked brand, [redacted] in snack food-sized containers for resale online, and through retailers and wholesalers located in the United States and China. As the record was insufficient to show that the Petitioner met the job creation requirements, we asked in the RFE for a more detailed discussion of projected job creation including (1) the NCE's ability to conduct a significant volume of business for two years with a single employee, (2) documentation of the size of the of the NCE's current premises, and (3) the proposal to hire three warehouse employees when the NCE is contracting out packing services. We also requested any other evidence that establishes the Petitioner's intention to create the required number of jobs for eligibility.

In response, the Petitioner notes that the NCE will hire an additional employee in early 2017 as an e-commerce associate, and expects overall "to create at least 5 more jobs in 2017, fulfilling the job creation requirement in the near future." She mentions that two of these positions are for procurement specialists who will be needed to fulfill orders from an importer located in China with whom the NCE is currently negotiating new business. The Petitioner also indicates that the business plans provided are "forward-looking statements," and while the expectations reflected in the business plans were reasonable at the time, they do not give any assurance that the expectations will prove to be correct.

While we accept that business plans are "forward-looking statements," the Petitioner must demonstrate that the stated job creation information in the business plans is credible. *See Ho*, 22 I&N Dec. at 213. Here, the Petitioner has not presented sufficient evidence showing that the two business plans in the record are credible, or that due to the nature and projected size of the NCE, it will need at least 10 full-time employees. The NCE does not appear to be poised to conduct business as described in either the initial or updated business plan.

According to the original business plan, the NCE commenced doing business in 2012 and planned to rent a warehouse and begin hiring workers in September 2013. The initial business plan projected that the company would hire 10 employees within the first 24 months of operation. The updated business plan describes the NCE's prospective need for 8 employees by June 2016 and 10 employees by June 2017, to be engaged as managers, sales and branding associates, and production and warehouse staff. The hiring timeline in the updated business plan substantially delays the hiring of employees relative to the employment forecasts offered in the original plan. Additionally, the

procurement specialists that would be hired as the Petitioner stated in the response to our RFE were not mentioned as prospective staff in either of the previous business plans. While the Petitioner notes that the lack of the approval of her Form I-526 petition has been a hindrance to the business, she has not sufficiently explained how this has impacted the business or affected the NCE's ability to create jobs in accordance with the hiring timelines in either business plan.

The updated business plan forecasts sales revenue to reach and then substantially exceed $1,000,000 starting in 2016 and continuing through 2020. The NCE's IRS Form 1120, U.S. Corporation Income Tax Return, for the fiscal year ended June 2016 reflects sales of $318,827 in that year. The Petitioner's statement and the NCE's payroll documentation show that the NCE employs one individual, as a branding manager. The NCE's level of sales and job creation experienced as of the end of fiscal year 2016 is far below the targets estimated in the updated business plan.

In response to our RFE, the Petitioner provided copies of the NCE's office and warehouse leases along with pictures of the interior of each location. The office space, which the NCE rents for $550 per month, appears to consist of a small enclosed office with one desk. The NCE sublets the warehouse space, which is comprised of a storage area for up to ten pallets of product, at a monthly "per box" rate, for a one-year term. According to the updated business plan, the NCE will create three warehouse positions and a production associate position. The leased facility, however, seems inadequate to provide packaging and shipping production space for four staff, and does not look sufficient to house and support the business operation as described in the updated business plan. The record contains no discussion or documentation regarding the NCE's future plans for the acquisition of additional space. Moreover, while both business plans indicate that warehouse and production staff would be involved in packaging the snack-sized dried fruit and nut products for resale, invoices in the record show that the NCE has continuously contracted out this function to other companies.

The Petitioner has provided generalized statements in her response to our RFE describing substantially reduced job creation within the NCE than previously forecasted in the two business plans in the record. *Ho*, 22 I&N Dec. at 212-13, discusses information that should be included in a comprehensive business plan, emphasizing that "the business plan must be credible." As the Petitioner has not establish by a preponderance of the evidence that the NCE has conducted or will conduct business as described in either its initial or updated business plan, she has not shown that either plan is comprehensive, or credibly demonstrates that her $500,000 investment will create, or that the NCE will need, no fewer than 10 new full-time positions. *See* 8 C.F.R. § 204.6(j)(4)(i)(B).

III. CONCLUSION

The Petitioner has not established by a preponderance of the evidence that she will create the necessary jobs for eligibility. Accordingly, she has not established 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).

ORDER: The appeal is dismissed.

Cite as *Matter of Q-S-*, ID# 127322 (AAO Jan. 5, 2017)