U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32742452

Date: JAN. 13, 2025

Appeal of 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 Investor Program Office denied the petition concluding that the record did not establish that the capital invested by the Petitioner was 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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 (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),

[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 (TEA) 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 July 2019, the relevant law then in existence governs this appellate adjudication.

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.[2] *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 July 2, 2019, she invested $500,000[3] in [redacted] the new commercial enterprise (NCE), which is sponsored by [redacted] pursuant to the Immigrant Investor Pilot Program. The NCE proposes to pool $25,000,000 from 50 immigrant investors in order to finance the development, construction and operation of a [redacted] branded hotel located in [redacted] Florida.

The Petitioner asserted that she derived her investment funds through a gift of 13,000,000,000 Vietnamese dong (VND) from her parents and siblings, obtained from a mortgage loan secured by a property they owned with the Petitioner in [redacted] Vietnam. The Petitioner further asserted that she forwarded the investment funds to an agent of [redacted] an Australian company registered under the Australian Securities and Investments Commission, and that [redacted] then transferred the funds in U.S. dollars to the NCE's escrow account.

In an attempt to document the source and path of her investment funds, the Petitioner submitted a gift agreement, accompanied by property records, bank records, and receipts. The Petitioner also submitted evidence of [redacted] business registration and licensing, and documentation of the transfer of VND funds from the Petitioner to [redacted].

The Chief issued a request for evidence (RFE), requesting additional evidence to demonstrate that the Petitioner's invested capital was obtained through lawful means and to document the path of the investment funds. The Chief specifically noted that, based on the record, there appeared to be a break in the path of funds from Vietnam to Australia and then to the NCE's escrow account. The Petitioner provided additional evidence in response to the RFE.

The Chief concluded that the evidence did not show the complete path of the Petitioner's funds from her transfer of cash to an authorized representative of [redacted] to that company's transfer of $550,020 to the NCE's escrow account on her behalf. In addition, the Chief determined that evidence did not show where in the transfer process the Petitioner's VND were converted to U.S. dollars.

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[2] 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).

[3] The Petitioner filed her petition in 2019 and indicated on the petition that the project is located in 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).

On appeal, the Petitioner submits additional evidence and asserts that the path of her funds, and thus their lawful source, was sufficiently demonstrated, as her funds did not leave Vietnam but were routed through [redacted] in a value transfer exchange.

Upon de novo review, we are remanding this matter for the Chief to consider the additional evidence submitted on appeal and added to the record.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.