U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5188135

Date: JAN. 14, 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, finding that the Petitioner did not document the lawful source of the funds she remitted to [redacted] the NCE. The Petitioner appeals, submitting additional documentation and maintaining that she has established eligibility for the EB-5 classification.

In these proceedings, it is the Petitioner's burden to establish, by a preponderance of the evidence, eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).[1] Upon *de novo* review, we will withdraw the Chief's decision and remand the petition for further action and consideration.

I. LAW

A foreign national may be classified as an EB-5 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. He or she may invest the required funds directly in an NCE or through a regional center.[2] Regional centers apply for designation as such with United States Citizenship and Immigration Services (USCIS). Designated regional centers identify and work with NCEs, which in turn are associated with a specific

[1] If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, it has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

[2] 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." 8 C.F.R. § 204.6(e) (2016); *see also* 8 C.F.R. § 204.6(j)(4)(iii), (m) (2016) (providing that a petitioner may satisfy job creation requirements through evidence that the NCE created jobs indirectly).

investment project taken on either directly by the NCE, or by one or more separate entities known as the "job creating entity." 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) (2016).

In addition, to be eligible for the EB-5 immigrant investor classification, an investor 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) (2016) (defining capital). 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. 206, 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The record must trace the complete 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.

II. ANALYSIS

In this case, the Petitioner filed the petition in December 2016, indicating that she invested $500,000 in the NCE, which is associated with [redacted], a USCIS designated regional center. According to page 5 of the May 2016 business plan, the NCE will solicit up to $100 million from foreign national investors to make a loan to [redacted] to develop and construct "a new high-rise, high density, mixed-use development on the waterfront in [redacted] New York."

The Petitioner claims that her EB-5 investment fund derived from a loan she obtained in China. The record includes evidence showing that in October 2016, she obtained a 3,900,000 RMB loan from [redacted] Bank using her real estate property in [redacted] China, as collateral. To facilitate her effort to bring the loan proceeds out of China and to the United States, she engaged in a currency swap with her friend [redacted] Bank records show that [redacted] Bank remitted the Petitioner's 3,900,000 RMB loan proceeds to [redacted]'s account ending in 1928, and [redacted] transferred $560,008.60 from his account ending in 9888 to the Petitioner's account ending in 3930. Other documentation shows that on November 10, 2016, the Petitioner remitted $552,030 from her account ending in 3930 to the NCE, which included her $500,000 investment and $52,000 administrative fees.

Upon reviewing the Petitioner's initial evidence, the Chief issued a request for evidence (RFE), specifically noting that the Petitioner "must document the path of the funds" and requesting evidence "demonstrating how and when [redacted] obtained the USD $560,008.60 he transferred" to the Petitioner. In her RFE response, the Petitioner claimed that [redacted]'s United States Dollars came from [redacted] a business in Hong Kong, for which he is the director and one of two shareholders. She offered, among other evidence, a document entitled "Resolution of the Company" that states [redacted] had agreed "to transfer USD 560,008.60 to . . . [redacted] . . . for capital exchange with . . . [the Petitioner] for a sum of RMB 3,900,000." The document further provides that the "RMB from [the] exchange will be used by the company for paying the current funds of business in [redacted] China."

[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).

Upon reviewing the record in its entirety, the Chief observed that [redacted]'s "bank statement does not reflect where [his funds] came from or that [they] derived from [redacted]." The Chief denied the petition, concluding that the record lacked sufficient evidence of [redacted] remitting at least $560,008.60 to [redacted] and therefore the Petitioner did not establish the lawful source of her EB-5 investment. The Chief explained: "[b]ecause [the] Petitioner's funds were routed through a third party exchanger, [she] bears the burden of demonstrating that the funds transferred by [redacted] to her] were obtained through lawful means."

On appeal, the Petitioner submits additional evidence concerning the lawful source of her funds that she did not present to the Chief. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose"). The Petitioner offers, among other documents, [redacted]'s bank statements, showing the following withdrawals: (1) $5,000 on October 28, 2016, with the notation "BIB – To ZHH"; (2) $300,000 on November 1, 2016, with the notation "BIB – to [redacted]"; and (3) $258,000 on November 1, 2016, with the notation "BIB – to [redacted]." According to [redacted]'s bank statements, these withdrawals appear to coincide with deposits that he received during the same period, which financed the $560,008.60 he remitted to the Petitioner. The Chief, however, did not have an opportunity to review this evidence, which the Petitioner submits for the first time on appeal.

Additionally, while the Petitioner claims that [redacted] has facilitated the currency exchange through [redacted], the record does not appear to document the company's receipt of her RMB 3,900,000. The evidence indicates that [redacted] received the Petitioner's loan proceeds in October 2016, but does not further show that he then remitted the funds to [redacted] to complete the alleged currency exchange. This issue might be relevant when the Chief considers whether the $552,030 the Petitioner transferred to the NCE belonged to her. *See* 8 C.F.R. § 204.6(j)(2) (2016); *Ho*, 22 I&N Dec. at 210-11; *Matter of Soffici*, 22 I&N Dec. 158, 165-66 n.3 (Assoc. Comm'r 1998) (stating that "[a] petitioner must . . . establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are his [or her] own").

Based on the above discussed reasons, we will remand the matter to the Chief to allow her to analyze evidence the Petitioner has submitted for the first time on appeal. *See Soriano*, 19 I&N Dec. at 766. The Chief should review the record in its entirety to determine if it sufficiently shows the complete path and lawful source of the funds the Petitioner remitted to the NCE and whether they qualify as capital under the regulation. *See* 8 C.F.R. § 204.6(e), (j)(2); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195; *Soffici*, 22 I&N Dec. at 165-66 n.3.

III. CONCLUSION

The appeal will be remanded to the Chief for further action in accordance with this decision.

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