U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8819812

Date: JAN. 22, 2021

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 submitted inconsistent information regarding her employment and income, and did not document the lawful source of the funds she claimed to have invested in [redacted] the NCE. The matter is now on appeal. On appeal, the Petitioner submits a statement as well as a letter from an attorney in China. She asserts that she has established eligibility for the EB-5 immigrant investor classification.

In these proceedings, it is the Petitioner's burden to establish, by a preponderance of the evidence, her 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 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 an NCE. The investor must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4) (2016). An immigrant investor may invest the required funds directly in an NCE or through a regional center,[2] as the Petitioner has done in this case. Regional centers apply for designation to participate in the EB-5 program with U.S. Citizenship and Immigration Services (USCIS). Designated regional centers identify and work with NCEs, which in turn are associated with

[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." *See* 8 C.F.R. § 204.6(e) (2016).

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

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) (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

According to pages 1 and 2 of the petition, the Petitioner invested $500,000[4] in the NCE, which is associated with a USCIS-designated regional center, [redacted] Pages 1 and 6 of an October 2015 business plan[5] indicates that the NCE seeks to raise up to $35,000,000 from 70 foreign national investors to loan to [redacted] the JCE, to construct "a mixed use development of [redacted] components" located at [redacted] in [redacted] New York.[6]

The Petitioner claims that her EB-5 investment funds derived from the proceeds of a 3,920,000 renminbi (RMB) loan she obtained in October 2016, for which she used her property in Beijing as collateral. She offers evidence showing that after she received the loan proceeds, she relied on the assistance of family members and friends to exchange the funds into U.S. dollars and to bring them from China to the United States. Additionally, she states that she bought the Beijing property that secured the loan with her earnings. She provides in a November 2016 statement that she worked as the Chief Financial Officer for [redacted] and that her gross income after taxes was 1,400,000 RMB from 1997 through 2003. She reiterates these claims in an August 2019 statement, and indicates that between 2009 and 2016 she was unemployed.

As evidence of her income, the Petitioner submitted an October 2016 "Certification of Employment and Income," noting that she served as " the Chief Financial Officer of [redacted] from February 1997 to June 2009," and that her total after-tax income was approximately

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[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).

[4] The Petitioner indicates that the NCE is located in a targeted employment area, and that the requisite amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2).

[5] In addition, the Petitioner submitted an updated business plan, dated October 2017, in her response to the Chief's notice of intent to deny the petition.

[6] Publicly available information appears to show that the project has stalled. Specifically, according to a [redacted] 2019 article, [redacted] posted on [redacted] *Reporter*, the project's developer has sought to sell the property. *See* https: [redacted] accessed on December 31, 2020, a copy of the article is incorporated into the record of proceedings. While this decision does not rely on the viability of the project, to establish eligibility for EB-5 classification, the Petitioner must resolve this issue in future filings.

550,000 RMB between February 1997 and December 1999; 850,000 RMB between January 2001 and December 2003; and 2,200,000 RMB between January 2004 and June 2009. The document does not indicate that she earned any income in 2000. In her response to the Chief's notice of intent to deny the petition (NOID), the Petitioner offered another "Certification of Employment and Income," dated August 2019, alleging that she received "salary and bonus" continuously from [redacted] between February 1997 and June 2006. In addition, she provided a 2003 "Commercial House Sale Contract," providing that she bought the [redacted] property for 1,201,794 RMB, paying 241,794 RMB in July 2003, and obtaining a 960,000 RMB loan. According to an October 2016 "Certification of Full Payment," she fully repaid the loan in January 2004.

As noted in the Chief's NOID and subsequently in her decision denying the petition, the Petitioner previously submitted two Online Nonimmigrant Visa Applications (DS-160) in December 2013 and March 2015, respectively. The Petitioner's employment history as specified in the two DS-160 is inconsistent with what was stated in the evidence she presented in support of the petition. According to her December 2013 DS-160, she worked for [redacted] between August 1997 and September 2001, not between February 1997 and June 2006. On her March 2015 DS-160, she claimed that she was then "Not Employed," and she answered "No" to the question "Were you previously employed?" Additionally, the Petitioner noted in both the 2013 and 2015 DS-160 that no one assisted her in filling out the applications.

The Petitioner has not resolved the inconsistencies the Chief identified regarding her employment and income history, which are relevant to the adjudication of the petition and appeal, because she claims to have relied on her earnings to purchase the Beijing property, and that she used the property to secure the 3,920,000 RMB loan, the proceeds of which financed her EB-5 investment. According to her statements and evidence in support of the petition, she worked for [redacted] between 1997 and 2006. However, her 2013 DS-160 noted that she stopped working for the company in 2001, two years before she purportedly bought the Beijing property with her earnings, and three years before she allegedly paid off the 960,000 RMB mortgage with her earnings. In addition, her 2015 DS-160 indicated that she was never employed. Moreover, according to a "Letter of Civil Mediation" concerning her divorce, which the Petitioner initially offered in support of the petition, as of the date of the document, April 12, 2000, she was "unemployed." This evidence is inconsistent with her claim that she was working in 2000.

Additionally, as noted, according to the October 2016 "Certification of Employment and Income," she did not receive an income from [redacted], in 2000. An August 2019 "Certification of Employment and Income," however, alleges that she received 209,000 RMB in salary and bonus from the company in 2000. As the Petitioner has presented inconsistent documents concerning her employment and income, "it is incumbent upon [her] 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 response to the Chief's NOID, the Petitioner submitted additional documents concerning her employment, including a "Beijing Social Insurance Personal Equity Record," a 2004 "Labor Contract," and her bank records between 2006 and 2009. The "Beijing Social Insurance Personal Equity Record" lists the Petitioner's insurance payments and claims that she worked for [redacted]

[redacted] in 2000. This information, however, contradicts her "unemployed" status specified in the April 2000 "Letter of Civil Mediation," as well as the 2016 "Certification of Employment and Income," which does not indicate that she received any income in 2000. The remaining documents postdate 2003, when she purportedly bought the Beijing property with her earnings, and 2004, when she allegedly paid off the mortgage on the Beijing property with her earnings. In short, none of these documents constitutes independent objective evidence that explains or reconciles the conflicting accounts about her work and earnings. *See Ho*, 19 I&N Dec. at 591-92.

On appeal, the Petitioner claims in a November 2019 statement that she used "an immigration agent" to fill out her DS-160 and blames the "immigration agent" for her inconsistent employment information. This claim is not supported by her statements on the 2013 and 2015 DS-160 that no one assisted her in filling out the applications. In addition, we note that according to page 2 of the Notice of Appeal or Motion, Form I-290B, the Petitioner "can read and understand English . . . ." Furthermore, the April 2000 "Letter of Civil Mediation," which is not associated with the Petitioner's 2013 or 2015 DS-160, specifies that she was unemployed in 2000. This document contradicts her alleged uninterrupted employment between 1997 and 2006.

In addition, the Petitioner presents on appeal a letter from an attorney in China. The letter asserts that "[the Petitioner] could not provide the individual income tax receipt during his [*sic*] working period in [redacted] from Feb. 1997 to June 2009 . . . ." This letter, however, does not resolve the inconsistencies noted above regarding the Petitioner's employment and earnings history. Regardless, according to regulations cited in the attorney's letter, "the taxpayer [Petitioner] shall be informed of tax withholding in a certain form," even if she could not obtain "tax withholding and collection vouchers." The referenced regulations therefore do not support the Petitioner and the attorney's position that she could not obtain any income tax documents to confirm her employment and earning history.

Upon a review of the record in its entirety, we conclude that the Petitioner has not demonstrated, by a preponderance of the evidence, the lawful source of the funds she invested in the NCE. *See* 8 C.F.R. § 204.6(e), (j)(3); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. Specifically, she has not established, by a preponderance of the evidence, that she lawfully obtained the Beijing property that secured the 3,920,000 RMB loan, the proceeds of which financed her investment in the NCE.

III. CONCLUSION

The Petitioner has not established her eligibility for the EB-5 classification because she has not sufficiently documented the lawful source of the funds she invested in the NCE. *See* 8 C.F.R. § 204.6(e), (j)(3). 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.