U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 06395702

Date: JAN. 26, 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, 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, which is affiliated with [redacted] (the Regional Center), a United States Citizenship and Immigration Services (USCIS) designated regional center.[1] 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). 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).

[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).

In addition, a petitioner must show that his or her 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. 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 path of the funds back to a lawful source.[2] *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

The Petitioner indicates she invested $500,000 in the NCE.[3] According to the business plan, the NCE seeks to raise up to $130,000,000 in EB-5 funds from 260 foreign national investors to loan to [redacted] the JCE. The JCE plans to use the EB-5 capital and other funds to finance the construction and development of five mixed use buildings centered around a transit terminal in [redacted] Florida. For the reasons discussed below, we find the Petitioner has not demonstrated, by a preponderance of the evidence, that her invested capital did not derive, directly or indirectly, from unlawful means.

In this case, the Petitioner alleges that her EB-5 capital derived from a 2,430,000 renminbi (RMB) mortgage loan secured by real property owned by the Petitioner as well as 1,500,000 RMB in sale proceeds. The record indicates the loan and sale proceeds were deposited in the Petitioner's [redacted] Bank account in July 2017. According to the declaration dated August 8, 2017, the Petitioner negotiated an informal currency exchange with her friend [redacted] due to the currency exchange restrictions imposed on mainland China. The initial record at the time of filing indicates the Petitioner remitted the loan and sale proceeds to [redacted]'s account at [redacted] Bank on July 26, 2017, and, in return, [redacted] remitted $562,500 from his HSBC [redacted] account to the Petitioner's HSBC account. The Petitioner then remitted her investment fund to the NCE escrow account on July 28, 2017.

The Chief issued a request for evidence (RFE) and notice of intent to deny (NOID) requesting the Petitioner provide documentary evidence regarding the alleged currency exchange, specifically noting that "[b]ecause [the] Petitioner's funds were routed through a third party exchanger, and there is insufficient documentation to demonstrate the legitimacy of [redacted]' funds and the funds in [his] bank, [the] Petitioner bears the burden of demonstrating that the funds transferred to the NCE were obtained through lawful means." The Chief's NOID specifically requested, among other things, documentary evidence showing the path of the Petitioner's investment funds out of mainland China as well as evidence demonstrating the third-party exchanger conducted a currency exchange or otherwise swapped currency using lawful funds.

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

After reviewing the record in its entirety, the Chief denied the petition finding the Petitioner did not demonstrate, by a preponderance of the evidence, that the USD funds remitted from the third-party exchanger derived from lawful sources. On appeal, the Petitioner submits additional evidence concerning the source of [redacted]'s USD funds that she did not present to the Chief such as additional business records and bank statements. The Petitioner, however, had already been put on notice of the required evidence, was given a reasonable opportunity to provide the evidence, and the evidence was reasonably available to the affected party at the time it was supposed to have been submitted.[4] These documents were specifically requested by the Chief and, in response, [redacted] issued a statement claiming "I do not have any obligation to disclose any information to any party irrelevant to the capital exchange." While [redacted] does not have an obligation to submit the requested evidence, his refusal to provide it to the Petitioner after two requests from the Chief does not indicate that the evidence submitted on appeal was not reasonably available at the time of the NOID. We will therefore review the record without considering the additional evidence submitted on appeal. *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").

In this case, the Petitioner has failed to demonstrate, by a preponderance of the evidence, the path and lawful source of the funds used in the informal currency exchange. The Petitioner acknowledges that China restricts currency exchanges to $50,000 per individual per year. In order to circumvent these restrictions, the Petitioner enlisted the help of [redacted] who agreed swap his USD funds for the Petitioner's mortgage and sale proceeds. The record indicates [redacted] obtained his USD funds by negotiating a separate currency swap with his employer, [redacted]. According to [redacted] [redacted] receives payment from a variety of foreign currencies but needed more RMB funds in its business reserves. As evidence of the lawful source of the USD funds provided by [redacted], the Petitioner offered a letter of authorization from the company claiming the USD funds derived from the company's lawful business operations. In support, the Petitioner provided sample delivery orders from May to July 2017 showing [redacted] had $570,544.05 in sales. While these delivery orders show that [redacted] was due to be paid $570,544.06 at some time, the Petitioner did not provide documentary evidence showing [redacted] had deposited and retained these funds before remitting them to [redacted]. The record must trace the path of the funds back to a lawful source. *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. Additionally, the provided bank letter showing only that [redacted] remitted $570,544.06 to [redacted]'s HSBC account does not clarify the source of the funds. Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *Id.* Here, the Petitioner has not sufficiently documented the path or source of the swapped funds which were later remitted to the Petitioner as her EB-5 investment fund.

On appeal, the Petitioner argues requesting the source of funds from a third party is a mistake of law because it applies an incorrect, heightened standard of proof. The Petitioner argues it was unreasonable to request records from [redacted] because, at the time of the currency swap, [redacted]

[4] *See Oyeniran v. Holder*, 672 F.3d 800, 808–09 (9th Cir. 2012) ("It is not sufficient that the evidence physically existed in the world at large; rather, the evidence must have been reasonably available to the petitioner."). *See also INS v. Doherty*, 502 U.S. 314, 324 (1992) (the Attorney General did not abuse his discretion by denying motion to reopen to apply for asylum and withholding based on lack of new material evidence).

was under the impression he would not have to disclose his personal information to parties unrelated to the transaction and the evidence in the record was adequate to show the lawful source of all funds. The Petitioner also claims USCIS should not request third party records because 8 C.F.R. § 204.6 only requires the Petitioner "prove the source of one capital rather than two capitals." We disagree. At the time of filing her petition, the Petitioner was required to show that her invested capital did not derive, directly or indirectly, from unlawful means and must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(e) and 8 C.F.R. § 204.6(j)(3). As discussed above, the Petitioner did not provide sufficient evidence demonstrating [redacted] had retained enough lawful business earnings to cover the $570,544.06 it remitted to [redacted] Notwithstanding the Petitioner's arguments that requesting third party documents is unreasonable, it is the Petitioner's burden to show that her invested capital did not derive from unlawful means. In this case, the Petitioner has not made such a showing. Here, for the reasons discussed, the Petitioner has not made such a showing.

III. CONCLUSION

Based on the reasons stated above, we conclude that the Petitioner has not documented the lawful source of her EB-5 capital. *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 did not sufficiently resolve inconsistencies discovered in the record and has not demonstrated, by a preponderance of the evidence, the lawful source or path of the funds used in an informal currency swap.

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.