U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33898049

Date: JAN. 29, 2025

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) (2018).[1] 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 U.S. economy and create at least 10 full-time positions for qualifying employees. Foreign nationals may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), section 610, as amended by section 575 of Pub. L. No. 114-113 (2015).

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner did not document the lawful source of the $500,000[2] she claimed to have invested in [redacted] (NCE), which is sponsored by [redacted][3] pursuant to the Immigrant Investor Program. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief and additional evidence and maintains that she has established eligibility for the EB-5 classification.

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 Chief's decision and remand the matter for entry of a new decision consistent with the following analysis.

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[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act of 2022, which made significant amendments to the EB-5 program, including the designation of a targeted employment area (TEA) and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner filed her petition in 2018, and the relevant law then in existence governs this appellate adjudication.

[2] The Petitioner indicated that the project would be located in a TEA, and, therefore, the required amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2018).

[3] [redacted] is a USCIS designated regional center to participate in the EB-5 program. *See* 8 C.F.R. § 204.6(e) (2018) (defining a "regional center" as an economic unit involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment).

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6(e). A petitioner must demonstrate by a preponderance of the evidence that the capital was their own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. 206, 210 (Assoc. Comm'r 1998). To show that the capital was their own, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the NCE. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. The record must trace the path of the funds back to a lawful source. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

Here, the Petitioner claims to have invested $500,000 in the NCE. According to Supplement No. 3 to Confidential Private Placement Memorandum, dated 2018, and Confidential Business Plan of [redacted] dated 2016, the NCE proposes to raise $300,000,000 from 600 immigrant investors and lend the entire amount to [redacted] which will in turn make a capital contribution to [redacted] (formerly known as [redacted]), the job-creating entity (JCE). The JCE intends to use the capital contribution to finance the construction and development of a 131-story mixed use luxury residential condominium building, to be known as [redacted] located at [redacted] New York, or to repay bridge or interim financing related to the development of [redacted]

A November 2018 letter from [redacted] the NCE's escrow agent, confirms that on November 5, 2018, it received $550,000 from [redacted] for the Petitioner, and the escrow agent deposited $500,000 of those funds into the NCE's escrow account as her EB-5 investment. The Petitioner asserts that she enlisted the help of [redacted] to exchange her investment funds from Vietnamese dongs to U.S. dollars and transfer the funds to the NCE's escrow account in the United States.

The Chief found that the record lacked sufficient documentary evidence to demonstrate the claimed path of funds transferred, that it was unclear from the record how the funds left Vietnam and were deposited into the bank account of [redacted] in Australia, and that there appeared to be a break in the path of funds from Vietnam to Australia and further to the NCE's escrow account. The Chief also found that the Petitioner did not provide sufficient evidence that [redacted] who collected the Petitioner's funds in Vietnam could lawfully exchange currency or participate in currency swaps in Vietnam. The Chief concluded that because the record was insufficient to show the lawfulness of the source and complete path of the Petitioner's funds, she did not meet her burden of proof to show the lawful source and path of funds.

On appeal, the Petitioner submits additional evidence and contends that she has demonstrated that her funds were lawfully sourced, provided to a licensed money exchanger, and then transferred to the NCE's escrow account. Upon de novo review, we are remanding this case for the Chief to consider the additional evidence submitted on appeal and added to the record.

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