U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 05174620

Date: JAN. 31, 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, 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 he 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 he 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 withdraw the Chief's decision and remand the petition for further action and consideration.

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 he invested $500,000 in the NCE.[3] According to the August 2016 business plan, the NCE seeks to raise up to $279,000,000 EB-5 funds from 558 foreign national investors to loan to [redacted] the JCE. The JCE plans to use the EB-5 capital and other funds for the development of an entire city block located in the [redacted] area of [redacted] NY.

In this case, the Petitioner alleges that his EB-5 capital derived from 3,695,602 renminbi (RMB) in proceeds from the sale of real property owned by the Petitioner. The record indicates [redacted] deposited the sale proceeds into his [redacted] bank account ending in 2323 on March 21, 2016. According to the Foreign Exchange Memo dated March 2016, [redacted] was unable to exchange more than $50,000 in currency per year due to the foreign exchange controls in China and sought the assistance of his friend, [redacted], to exchange the full 3,580,500 RMB into $555,000. The Petitioner remitted 2,000,000 RMB and 1,580,500 RMB to [redacted]'s Bank account ending 3682 on March 17 and March 22, 2016, respectively. [redacted] then transferred $555,000 from her [redacted] account ending in 0833 to the Petitioner's [redacted] Bank [redacted] Branch) account ending in 9150 on August 25, 2016. The Petitioner transferred $555,000 to the escrow account belonging to [redacted][4] in August 2016. On March 29, 2017, the [redacted] returned $510,048 to the Petitioner's [redacted]'s Bank [redacted] Branch) account ending in 9150. The Petitioner then remitted $505,050 to the NCE on April 20, 2017.

The Chief issued a request for evidence (RFE) specifically noting that the Petitioner "must document the path of the funds" and informed the Petitioner "[i]f [the Petitioner] claims that the funds in [redacted] bank account were sent from… China, then please submit sufficient evidence to demonstrate the claimed path(s) of transfer for how [redacted]'s funds left… China and were deposited in the [redacted] bank account." In his RFE response, the Petitioner claimed that the source of [redacted]'s $555,000 was her retained earnings from her employment with [redacted] and [redacted]. He offered, among other evidence, a declaration from [redacted]

[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(t)(2).

[4] The Petitioner indicates [redacted] was the NCE for an EB-5 project that did not ultimately use the EB-5 funds and therefore returned some of the funds to the foreign investors.

[redacted] stating she was unable to obtain a certificate from [redacted] due to the passage of time (4 years) but was able to obtain a reference letter dated November 5, 2014, and a Performance, Pay, and Potential statement for the years 2012 to 2014. [redacted] also submitted a business card from [redacted] as well as personal tax documents for the years 2014 to 2016. The Petitioner also argued USCIS had no authority to request documentation of the source or path of funds from a third party.

After reviewing the record in its entirety, the Chief explained the RFE was issued because "there was a break in the path of funds… from China to [redacted] [and] USCIS was unable to determine [the] capital used for investment was obtained through lawful means." The Chief denied the petition, concluding the record lacked sufficient evidence to show the funds used in the currency exchange were transferred from China to [redacted] to be exchanged by [redacted] or that her retained earnings in [redacted] were ultimately deposited in her [redacted] account ending in 0833. The Chief explained: "[b]ecause [the] Petitioner's funds were routed through a third party exchanger, [he] bears the burden of demonstrating that the funds transferred by [redacted] to him] were obtained through lawful means."

On appeal, the Petitioner submits additional evidence concerning the lawful source of his funds that he 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] Bank statements showing monthly salary deposits from [redacted]) before she transferred 1,550,000 HKD to her [redacted] account ending in 0833. According to [redacted]'s updated declaration, this evidence demonstrates she used her retained earnings to exchange HKD into USD used in the Petitioner's investment fund. The Chief, however, did not have the opportunity to review this evidence, which the Petitioner submits for the first time on appeal.

Additionally, while the Petitioner claims that she used her retained earnings from [redacted] to fund 3,000,000 HKD of the funds used in the currency exchange, the record indicates that [redacted] actually sold financial products to fund the exchange. On appeal, the Petitioner provided an Exchange Memo dated April 29, 2016, showing [redacted] used her [redacted] Bank account ending 3682 to exchange 2,503,800 RMB into 3,000,000 HKD and remitted the HKD to her [redacted] account ending in 0833. [redacted] provided an updated declaration stating that 2,503,800 RMB was her former income. However, [redacted] Bank statements show the majority of the RMB funds used in the exchange derived from her redemption of 2,500,000 RMB total in "authorized financial products" on April 11 and April 28, 2016. This issue might be relevant when the Chief considers whether the Petitioner has demonstrated the $555,000 deposited in the NCE derived from lawful sources. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that "it is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence").

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