U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26092256

Date: JULY 29, 2024

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 classification makes immigrant visas available to noncitizens who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees. Noncitizens 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, 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 the record did not establish (1) that the capital, which has been invested by the Petitioner or which the Petitioner is actively in the process of investing, is capital obtained through lawful means and (2) that the new commercial enterprise (NCE) will create at least 10 full-time positions for qualifying employees. The Chief did not defer to the job creation determination in USCIS' previous approvals of the Form I-526 exemplar project and previously filed Forms I-526 associated with the NCE because the Chief determined that the underlying facts upon which a favorable decision was made have materially changed and that the previously favorable decision was legally deficient. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 dismiss the appeal.

I. LAW

Volume 6, Part G, Chapter 3 of the USCIS Policy Manual articulates USCIS' policy regarding deference to previous agency determinations:

> As a general matter, USCIS does not reexamine determinations made earlier in the EB-5 process, and such earlier determinations will be presumed to have been properly

> decided. When USCIS previously concluded that an economic methodology is reasonable to project future job creation as applied to the facts of a particular project, USCIS defers to this determination for all related adjudications directly linked to the specific project for which the economic methodology was previously approved.
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> Conversely, USCIS does not defer to a previously favorable decision in later proceedings when, for example, the underlying facts upon which a favorable decision was made have materially changed, there is evidence of fraud or misrepresentation in the record of proceeding, or the previously favorable decision is determined to be legally deficient. A change is material if it would have a natural tendency to influence or is predictably capable of affecting the decision.[1] When a new filing involves a different project from a previous approval or the same previously approved project with material changes to the project plan, USCIS does not defer to the previous adjudication.

See generally 6 USCIS Policy Manual G.3(A)(2), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-3.

As required by 8 C.F.R. § 204.6(j)(4)(i), the petition must establish that the investment of the required amount of capital in an NCE will create full-time positions for at least 10 qualifying employees within two years. *See also* 8 U.S.C. § 1153(b)(5)(A)(ii). For purposes of the Form I-526 adjudication and the job creation requirements, the two-year period described in 8 C.F.R. § 204.6(j)(4)(i)(B) is deemed to commence six months after the adjudication of the Form I-526.

According to 8 C.F.R. § 204.6(j)(4)(i), to show that an NCE will create full-time positions for at least 10 qualifying employees within two years, the petition must be accompanied by:

> (A) Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
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> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

A petition is not required to demonstrate that 10 full-time positions for qualifying employees have already been created by the commercial enterprise. However, where the jobs have not already been created, the petition must include a comprehensive business plan demonstrating the need for at least 10 employees within the next two years. *Matter of Ho* explained that a comprehensive business plan must be sufficiently detailed to permit USCIS to draw reasonable inferences about job-creation potential. *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998).

Petitioners investing in an NCE within a regional center may rely on economic methodologies to demonstrate that the investment will create indirect jobs as a result of the investment in the NCE, but

[1] *See Kungys v. United States*, 485 U.S. 759, 770-72 (1988).

such methodologies must be reasonable. *See* Pub. L. No. 102-395; 8 C.F.R. §§ 204.6(e), (j)(4)(iii), (m)(7)(ii). The petitioners must provide sufficient evidence for USCIS to determine whether methodologies used are reasonable.

Indirect jobs are those that are held outside of the NCE but are created as a result of the NCE.[2] For example, indirect jobs include, but are not limited to, those held by employees of the job-creating entity (JCE) (when the JCE is not the NCE) as well as employees of producers of materials, equipment, or services used by the NCE or the JCE.[3]

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. at 210. 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.

II. ANALYSIS

The Petitioner indicated on page 6 of his petition that on August 9, 2017, he invested $500,000[4] into [redacted],[5] the new commercial enterprise (NCE), which is sponsored by [redacted],[6] the Regional Center. According to the Confidential Private Placement Memorandum, the NCE proposes to raise $35,000,000 from 70 immigrant investors and lend the entire amount to [redacted],[7] the job-creating entity (JCE).

The business plan of [redacted] indicates that the JCE intends to expand and upgrade an existing 2,100 acres ski resort, including a 7,000 yards 18-hole golf course, in [redacted] New Hampshire, to create a four-season vacation resort by improving ski lifts and snowmaking equipment and enhancing the resort's summer activities, including a zip-line course, mountain biking trails, tennis, horseback riding, swimming, boating, fishing, and golf course. The JCE also intends to expand

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[2] *See generally* 6 *USCIS Policy Manual* G.2(D)(4), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2.
[3] *Id.*
[4] On March 15, 2022, President Joe 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 s*ection 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner filed his petition in 2017 and asserted that the project is in a TEA. Therefore, the requisite amount of capital investment was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2015).
[5] On [redacted] 2020, a Limited Partnership Amendment was filed with the State of New Hampshire, Department of State, for [redacted] and the name of the limited partnership was changed to [redacted]
[6] On [redacted], 2023, a Limited Liability Company Certificate of Amendment to the Certificate of Formation was filed with the State of New Hampshire, Department of State, for [redacted], and the name of the limited liability company was changed to [redacted]
[7] On [redacted] 2021, the name of [redacted] was changed to [redacted]

and reconstruct existing two lodge buildings by adding 35 new overnight accommodations, spa facilities, common meeting rooms, retail shops, expanded rental and administration offices, and services desk for outfitters for summer and winter.

The Petitioner asserted that he derived his investment funds through his employment income from [redacted] To support this claim, the Petitioner submitted his Forms 2-NDFL, Reference on Individual Income, for 2015 and 2016, which show monthly income of the Petitioner from [redacted] from May 2015 to December 2016, the total income earned by the Petitioner during this period, the amount of tax calculated, and the amount of tax withheld. The Petitioner also submitted his and his spouse's bank statements with [redacted] for their joint account ending in 4937, his spouse's bank statements with [redacted] for her accounts ending in 3917 and 0895, a copy of an undated check for $545,000 issued by the Petitioner's spouse to the NCE from her [redacted] account ending in 3917. In addition, the Petitioner submitted letters from the president of the NCE, confirming the receipt of $500,000 capital investment and $45,000 subscription and development fee from the Petitioner to the NCE's escrow account on August 9, 2017.

The Chief questioned the lawful source of the $500,000 invested in the NCE. Specially, the Chief found that the Petitioner did not address the inconsistencies in monthly income between his Forms 2-NDFL and purported monthly salary payments to his [redacted] account ending in 4937. The Chief found that a total of 34,061,776 Russian Ruble (RUB) was withdrawn from the Petitioner's [redacted] account ending in 4937 from December 2014 to April 2017 and a total of $504,956 was deposited into the Petitioner's spouse's [redacted] bank account from [redacted] accounts ending in 4985 and 4939 from April 2016 to July 2017, but the Petitioner did not provide evidence of the path of funds from the purported salary income paid by [redacted] to the $545,000 paid to the NCE on August 9, 2017. The Chief also found a material inconsistency in the Petitioner's Form I-526 and supporting evidence because in his Form I-526, the Petitioner indicated that he has been chief executive officer of [redacted] bank since July 2013, but he had no income.

On appeal, the Petitioner contends that the business plan is credible and the JCE directly created full-time positions and offers a letter from [redacted] president of [redacted] dated August 2021, as well as duplicate copies of the documents previously submitted to USCIS. However, neither the Petitioner's appellate brief nor the evidence submitted on appeal addresses the inconsistencies and deficiencies noted in the Chief's decision regarding the Petitioner's investment funds and, therefore, does not discuss whether the funds he invested in the NCE derived from lawful sources. Upon de novo review, we agree with the Chief's determination that the Petitioner has not established by a preponderance of the evidence that the funds invested by the Petitioner have been obtained through lawful means.

When dismissing an appeal, we generally do not address issues that were not raised with specificity on appeal. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Because the Petitioner did not address the issue regarding his investment funds with specificity on appeal, we deem the issue waived and find the Petitioner has not shown by a preponderance of the evidence that his invested funds did not derive from unlawful means. 8 C.F.R. § 204.6(e).

Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and reserve the Petitioner's appellate arguments regarding the job creation requirements. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not adequately documented the lawful source of his investment funds. *See* 8 C.F.R. § 204.6(e), (j)(3); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Specifically, he has not provided sufficient evidence of the path of funds from the purported salary income paid by [redacted] to the $545,000 paid to the NCE.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.