U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20184410

Date: JUNE 4, 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) (2017). This fifth preference (EB-5) 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, 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 record did not establish that the capital invested by the Petitioner in the new commercial enterprise were obtained through lawful means and that the Petitioner is the owner of the invested capital. The matter is now before us on appeal pursuant to 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

Applicable statutory and regulatory provisions provide that the immigrant investor must generally invest or be actively in the process of investing at least $1,000,000 of capital in a new commercial enterprise. 8 U.S.C. §§ 1153(b)(5)(A)(i), (C)(i); 8 C.F.R. §§ 204.6(f)(1), (j)(2). Alternatively, an immigrant investor can invest or be actively in the process of investing a reduced amount ($500,000) of capital if the new commercial enterprise into which the immigrant investor is investing is principally doing business in, and creates jobs in, a targeted employment area. 8 U.S.C. §§ 1153(b)(5)(A)(i), (B)(i), (C)(ii); 8 C.F.R. §§ 204.6(f)(2), (j)(2), (j)(6).

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the immigrant investor, provided that the immigrant investor is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. 8 C.F.R. § 204.6(e). Further, a petitioner must show that they have placed their own capital at risk, i.e., that they are the legal owner of the invested capital. *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm'r 1998); *see also Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998) (interpreting 8 C.F.R. § 204.6(e) as requiring that a petitioner establish the funds invested are their own).

II. ANALYSIS

The Petitioner indicated on page 2 of her petition that on March 27, 2017, she invested $500,000[1] in [redacted], the new commercial enterprise (NCE), which is sponsored by [redacted] pursuant to the Immigrant Investor Pilot Program. According to the Confidential Private Placement Memorandum, the NCE proposes to raise $300,000,000 from 600 immigrant investors and lend the entire amount to [redacted], the job-creating entity (JCE), for the construction of the [redacted] Project to replace deteriorated infrastructure, including power supply, replace aging vehicles and add capacity, and fix and upgrade stations in the greater [redacted] metropolitan region in Pennsylvania.

The Petitioner asserted that she derived her investment funds through a gift from her parents, [redacted] The Petitioner further asserted that her parents obtained the gift funds through (1) a mortgage loan of 12,000,000,000 Vietnamese dong (VND) from Vietcombank secured by two term savings accounts and (2) her parents' accumulated employment income of VND 600,000,000. The Petitioner also asserted that her parents opened the term savings accounts using the sale proceeds of a real property, which was purchased by her parents using their accumulated employment income. In addition, the Petitioner claimed that in order to transfer her investment funds, her parents transferred the funds to their foreign business partner and then their partner forwarded the funds to her account in the United States.

The Chief found there is no evidence in the record to corroborate the Petitioner's claim that her investment funds derived from a gift from her parents. Instead, the Chief found that the donation contract between the Petitioner's parents and a third party, [redacted] shows that the Petitioner's parents gifted VND 12,600,000,000 to Mr. [redacted] Due to the inconsistency between the donation contract and Mr. [redacted] statement and the lack of documentary evidence demonstrating that the Petitioner was the intended recipient of the gifted funds, the Chief concluded she could not determine the ownership of funds belonged to the Petitioner.

On appeal, the Petitioner contends that the Chief erred in denying her petition on the ground that she did not demonstrate that the invested capital was obtained through lawful means and that she is the

[1] 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* section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner filed her petition in 2017 and indicated that the project is located in a TEA. Therefore, the requisite amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2015).

owner of the invested capital because she has provided sufficient evidence to demonstrate that the invested capital was obtained through lawful means and that she is the rightful owner of the capital. In support of her appeal, the Petitioner provides a declaration of her father, dated May 2021, as well as duplicate copies of the documents previously submitted to USCIS.

Contrary to the evidence submitted with the petition, the Petitioner now claims that she, her father, and Mr. [redacted] mutually agreed that the VND funds belonged to her and were transferred to Mr. [redacted] solely for the purpose of transferring the funds in U.S. dollars to her. She refers to a declaration of her father, dated May 2021, attesting that the VND 12,600,000,000 was always intended as a gift for the Petitioner. The Petitioner's father states: "Although the Contract for Assets Donation states the funds were donated to Mr. [redacted] the VND 12,600,000,000 was always intended to be a gift from my wife and I to our daughter, [redacted] for her EB-5 investment funds. We never intended the funds to be a gift to Mr. [redacted] . . ."

The declaration of the Petitioner's father, which attempts to claim that the funds gifted to Mr. [redacted] belonged to the Petitioner, is materially inconsistent with other evidence in the record that has not been overcome with independent and objective evidence. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Because the declaration of the Petitioner's father is materially inconsistent with other evidence in the record that has not been overcome with independent and objective evidence, we determine the Petitioner has not demonstrated that the funds gifted to Mr. [redacted] belonged to her or that she is the legal owner of the invested funds.

The record includes an executed asset donation contract between the Petitioner's parents and [redacted] dated March 2017, in which the Petitioner's parents agree to donate VND 12,600,000,000 to Mr. [redacted] and Mr. [redacted] agrees to receive the money. The donation contract further states that the Petitioner's parents voluntarily donate the money to Mr. [redacted] without any condition and that Mr. [redacted] has a full right to use the money for any private purpose. The record does not contain any similar donation contract between the Petitioner's parents and the Petitioner.

The record also includes three statements from Mr. [redacted] In his statement, dated March 2017, Mr. [redacted] states that he commits to support the Petitioner and his father in the process of EB-5 immigration investment and that the VND funds exchanged to U.S. dollars and transferred to the Petitioner's account belong to the Petitioner and his father. In his statement, dated September 2019, Mr. [redacted] states that due to foreign transfer restrictions in Vietnam, he agreed to assist the Petitioner's father in transferring the EB-5 investment funds to the United States, that the Petitioner's father's VND funds were used to purchase U.S. dollars, and that the U.S. dollars transferred to the Petitioner's bank account in the United States belong to the Petitioner. In his statement, dated January 2021, Mr. [redacted] repeats that due to foreign transfer restrictions in Vietnam, he agreed to assist the Petitioner's parents in transferring the Petitioner's EB-5 investment funds to the Petitioner's account in the United States, that the Petitioner's parents' VND funds were used to purchase U.S. dollars to transfer to the Petitioner, and that the U.S. dollars belong to the Petitioner.

Mr. [redacted] statements explain how he used the gift funds after receiving the money from the Petitioner's parents but do not dispute the validity of the donation contract between the Petitioner's parents and Mr. [redacted] His statements, bank statements, and transaction receipts show that Mr. [redacted] exchanged the VND funds received from the Petitioner's parents to U.S. dollars and then transferred the U.S. dollars to the Petitioner's account in the United States for the Petitioner's EB-5 investment. However, according to the donation contract, the Petitioner's parents voluntarily donated the VND funds to Mr. [redacted], not to the Petitioner, without any condition and Mr. [redacted] was free to use the gift funds for any private purpose - whether it was for his own benefits or for the benefits of another individual. While Mr. [redacted] claims that the U.S. dollars transferred to the Petitioner's bank account in the United States belonged to the Petitioner, the record lacks sufficient evidence to document the transfer of the funds from the Petitioner's parents to the Petitioner. None of his statements clearly transfers the ownership of the gift funds from Mr. [redacted] to the Petitioner.

Furthermore, Mr. [redacted] claims that the U.S. dollars transferred to the Petitioner's bank account in the United States belong to the Petitioner is materially inconsistent with other evidence in the record that has not been overcome with independent and objective evidence. The donation contract between the Petitioner's parents and [redacted] indicates that the Petitioner's parents voluntarily donated VND 12,600,000,000 to Mr. [redacted] without any condition and that Mr. [redacted] had a full right to use the money for any private purpose. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

The Petitioner previously claimed that the donation contract between the Petitioner's parents and Mr. [redacted] was prepared only for Mr. [redacted] bank, [redacted] Commercial Bank, to allow the bank to verify the source of funds, which derived from the Petitioner's parents. The Petitioner submitted a legal opinion letter from an attorney in Vietnam, which states that foreign nationals (residents or non-residents) are allowed to transfer money in and out of Vietnam as long as they can establish that the money was lawfully obtained. This legal opinion and Mr. [redacted] French passport support that Mr. [redacted] as a French citizen was permitted to exchange funds and transfer the funds without foreign transfer restrictions in Vietnam. However, this legal opinion does not address the validity of the donation contract between the Petitioner's parents and Mr. [redacted] This legal opinion does not establish that the funds voluntarily and unconditionally gifted to Mr. [redacted] actually belonged to another individual, the Petitioner.

While the Petitioner contends that she has demonstrated that she is the rightful owner of the invested funds, the record shows that the VND 12,600,000,000 was gifted to a third party, not to the Petitioner. The Petitioner's parents voluntarily donated the money to the third party without any condition and the third party was free to use the money for any private purpose. The record shows that the invested funds belong to the third party, not the Petitioner, based on the executed donation contract between the Petitioner's parents and the third party. The parties do not dispute the validity of the donation contract. As such, the Petitioner has not established that she has placed her own capital at risk, i.e., that she is the legal owner of the invested capital. *See Matter of Ho*, 22 I&N Dec. 206; *see also Matter of Soffici*, 22 I&N Dec. at 165.

In light of our discussion on the required amount of capital investment, we decline to consider the Chief's other ground for denial, the Petitioner's failure to demonstrate the claimed lawful source of funds. We will reserve this and other eligibility issues for future consideration should the need arise.[2]

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that she has placed her own capital at risk, i.e., that she is the legal owner of the invested capital. Therefore, we conclude the Petitioner is ineligible for the immigrant investor visa classification.

ORDER: The appeal is dismissed.

[2] *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 alternate issues on appeal where an applicant is otherwise ineligible).