U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24919706

Date: JUN. 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 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, which has been invested by the Petitioner or which the Petitioner is actively in the process of investing, is capital obtained through lawful means. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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). 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.

The Petitioner indicated in his brief that on November 29, 2018, he 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 Private Placement Offering Memorandum, the NCE proposes to raise $50,000,000 from 100 immigrant investors and invest the entire amount in [redacted] the job-creating entity (JCE). The business plan of [redacted] indicates that the JCE will develop, own, and operate [redacted] a multifamily apartment building located in [redacted] Florida.

The Petitioner asserted that he derived his investment funds through his accumulated employment income from [redacted] from 2007 to 2018 and from [redacted] from 2013 to 2018, dividends earned from [redacted] from 2014 to 2017, and dividends earned from [redacted] from 2014 to 2018.

The Chief determined that the Petitioner did not demonstrate that his income was actually used for his investment in the NCE, that he did not demonstrate the accumulation of his income, and that he did not submit evidence to clarify the source of deposits into his bank accounts.

On appeal, the Petitioner contends that he had accumulated lawful income earnings and savings of at least 1,838,350 United Arab Emirates Dirham (AED) from his employment, business, and rental income before his investment in the NCE and that his investment funds derived from his income earnings and savings. In support of his appeal, the Petitioner submits additional evidence, including his statement explaining the source and path of his investment funds, commercial or professional licenses of his employers and entities owned by the Petitioner, title deeds and tenancy contracts for his rental real properties in Dubai, bank statements for his various accounts with [redacted] Commercial Bank, and diagrams showing the path of his funds. It appears that the additional evidence addresses the grounds upon which the Chief denied the petition. As the Petitioner now offers documentation that the Chief did not have a chance to review, we will withdraw the Chief's decision and remand the matter for the entry of a new decision.

On remand, the Chief should consider the additional documentation and determine if the Petitioner has established eligibility to be classified as an immigrant investor, including determining whether he has presented sufficient documentation documenting the lawful source of the funds he claimed to have invested in the NCE.

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

[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 his petition in 2018 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).