U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 06797907

Date: JUNE 15, 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 she remitted to [redacted] the NCE, which is affiliated with [redacted] Regional Center (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 she has shown eligibility for the EB-5 classification.

Upon de novo review, we will sustain the appeal.

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).

In addition, a petitioner must show that his or her invested capital did not derive, directly or indirectly,

[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).

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 she invested $500,000 in the NCE.[3] According to the April 2016 business plan, the NCE seeks to raise up to $17,500,000 EB-5 funds from 35 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 a premium hotel resort located in [redacted] Florida.

In this case, the Petitioner alleges that her EB-5 capital derived from a 2,700,000 renminbi (RMB) gift from her parents, Ms. [redacted] and Mr. [redacted] and 1,100,000 RMB in proceeds from the sale of real property owned by the Petitioner. The record indicates the Petitioner's parents obtained the gift funds from the proceeds of the sale of their real property in 2016. The 3,800,000 RMB in gift funds and sale proceeds were deposited in the Petitioner's [redacted] Bank account in June 2017. According to the Petitioner, she then transferred the funds to 11 individuals in order to exchange the funds from RMB to USD. The USD funds were deposited in the following accounts located in [redacted]: $172,040.55 in Mr[redacted]s [redacted] Bank account, $190,000 in Ms. [redacted] Bank account, and $190,898.13 in the Petitioner's [redacted] Bank account. The USD funds were then consolidated in the Petitioner's [redacted] Bank account and remitted to the NCE as part of her EB-5 investment fund.

The Chief issued a request for evidence (RFE) and notice of intent to deny (NOID) specifically noting that the "Petitioner has not fully documented the path of funds tracing [the] Petitioner's funds to the NCE's escrow account" because the record lacked documentary evidence of the three bank accounts in [redacted] The Chief requested the Petitioner provide bank statements and wire receipts from these three bank accounts or any other evidence that would document the complete path of the Petitioner's investment funds to the NCE. In her RFE response, the Petitioner offered various wire receipts, remittance applications, and letters showing funds were disbursed from the three bank accounts. The Petitioner then provided Ms. [redacted]'s [redacted] Bank statement as well as a letter from counsel stating the other two bank accounts belonging to Mr. [redacted] and the Petitioner are located in [redacted], are over two years old, and the information from these two accounts are not available as obtaining them would require a physical request and search.

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[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).

After reviewing the record in its entirety, the Chief observed that the Petitioner had not provided a written statement from [redacted] Bank indicating records of Mr.[redacted] and the Petitioner's accounts were not available or that the Petitioner had made repeated good faith attempts to obtain the documents as required under 8 C.F.R. § 103.2(b)(2)(ii). The Chief denied the petition, concluding the record lacked sufficient evidence to demonstrate Mr.[redacted] or the Petitioner received and maintained the USD remittances from the 11 individuals involved in the currency exchange and therefore the Petitioner did not establish the lawful source or path of her EB-5 investment. On appeal, the Petitioner submits additional evidence concerning the lawful source of her funds that she did not present to the Chief.

The Petitioner now offers, on appeal, bank statements and transfer notices from Mr.[redacted] and the Petitioner's bank accounts with [redacted] Bank in [redacted] and maintains these documents establish the Petitioner's eligibility for the benefit sought. While these new documents were already requested from the Chief, the Petitioner asserts the evidence already in the record establishes the lawful source and path of the exchanged funds that were deposited in three bank accounts in [redacted] before being consolidated in the Petitioner's [redacted] Bank account and then forwarded on to the NCE. The record contains outward remittance forms showing the 11 individuals involved in the currency exchange remitted the USD funds to the bank accounts belonging to Mr.[redacted] Ms.[redacted], and the Petitioner in [redacted] The Petitioner later provided Ms.[redacted]'s [redacted] Bank account statement as well as outward remittance forms and applications showing Ms. [redacted] and Mr.[redacted] remitted the USD funds to the Petitioner's [redacted] Bank account which were then forwarded on to the NCE. These documents corroborate the Petitioner's assertions that the lawful path and source of the exchanged funds has been sufficiently established by a preponderance of the evidence.

Here, the Chief did not question the lawful source of the Petitioner's investment fund but rather takes issue with the Petitioner's failure to provide the [redacted] Bank account statements from Mr.[redacted] and the Petitioner. However, the Chief did not identify any irregularities in the record that would raise doubts regarding the transactions to and from the three bank accounts in [redacted]. The record indicates the USD funds were remitted to Mr.[redacted] Ms.[redacted] and the Petitioner and briefly held in these accounts before being consolidated and forwarded on to the NCE. The Petitioner provided remittance applications and transfer forms showing the USD funds had only briefly been held in these accounts before being sent to the NCE and do not indicate that any undocumented sources of funds had been retained in these accounts prior to being sent to the NCE. Absent any negative considerations regarding the source(s) of the funds in the three bank accounts, we find the evidence in the record sufficient to establish, by a preponderance of the evidence, that the Petitioner sufficiently documented the lawful source and path of the funds transferred to Mr.[redacted] Ms.[redacted] and the Petitioner before being invested in the NCE.

III. CONCLUSION

The Petitioner has established the lawful source and path of her investment into the NCE. Accordingly, she has demonstrated eligibility for the immigrant investor classification. In visa petition proceedings, the petitioner bears the burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has been met.

ORDER: The appeal is sustained.