U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12596204

Date: JUN. 15, 2021

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 asserts that the record establishes his eligibility for the benefit sought.

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 dismiss 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).

[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] *Id.*

II. ANALYSIS

The Petitioner indicates he invested $500,000[3] in the NCE on October 27, 2016. The most recent business plan claims the NCE seeks to raise up to $11,500,000 in EB-5 funds from 23 immigrant investors to loan to [redacted], the job creating entity (JCE). The JCE plans to use the EB-5 capital and other funds to develop and construct a hotel in [redacted] Florida.

The Chief issued a request for evidence (RFE), notifying the Petitioner that he did not submit sufficient evidence documenting the lawful source of his EB-5 capital. Among other things, the Chief raised concerns regarding a lack of documentation showing the lawful source of the $500,000 invested in the NCE. After reviewing the record, the Chief denied the petition, finding that the Petitioner did not provide sufficient documentation showing the lawful source of his accumulated business income savings used to secure a loan that funded his EB-5 investment in the NCE. The Chief also found the Petitioner did not sufficiently demonstrate the Petitioner and his spouse's annual salary or the validity of the documents submitted to support the operation of the Petitioner's business, [redacted] On appeal, the Petitioner contends that he has shown his eligibility for the classification and offers additional documentation.

A. Path and Source of the Petitioner's EB-5 Capital

In this case, the Petitioner alleges that his EB-5 capital derived from a 12,933,300,000 Vietnamese dong (VND) bank loan secured by the Petitioner's accumulated business income. The record indicates the bank loan proceeds were deposited in the Petitioner's [redacted] Bank account ending in x8003 on October 24, 2016. The record at the time of the Chief's decision indicates the Petitioner used 12,560,755,000 of the loan proceeds to purchase $561,500 from his bank. The Petitioner alleges he remitted the USD funds to his sister's [redacted] account which she then forwarded to the NCE on the Petitioner's behalf.

The Petitioner has not submitted sufficient documentation to show the lawful source of his accumulated "business income savings" used as collateral to obtain the bank loan proceeds that ultimately funded his EB-5 investment. The record at the time of decision indicates the Petitioner was

[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 requisite amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2).

approved for the [redacted] Bank loan because he had 13,614,000,000 VND in his [redacted] Bank account ending in x8004 to use as collateral which the Petitioner claims derived from his business income. In response to the Chief's RFE, the Petitioner submitted a statement from his [redacted] Bank account ending in x8002 showing three deposits totaling 13,614,230 VND were received on October 24, 2016. The Petitioner submitted his "Supplemental Declaration," dated August 2, 2018, which claimed the three deposits derived from the following: 5,565,000,000 VND from a customer purchase of a luxury vehicle; 2,449,230,000 VND from a customer loan payment after buying a car; and 5,600,000,000 VND from "a relative who kept my cash while I was on a business trip to [redacted]." The bank statement indicates the Petitioner then used 13,614,000,000 VND of these funds to open his [redacted] Bank x8004 savings account.

However, the Petitioner has not sufficiently demonstrated the VND funds in his x8002 and x8004 bank accounts derived from lawful sources. Throughout the record, the Petitioner refers to the VND funds in his x8002 and x8004 as his accumulated "business income" which he received as the owner and director of [redacted] However, the transactions in his x8002 account are not classified as deposits of business income but are instead characterized as two business transactions and the return of personal funds from a relative. The record indicates [redacted] routinely sold cars and received the proceeds from its business transactions in its own [redacted] Bank account. Here, the Petitioner has not shown the two transactions in his personal x8002 bank account relating to a car purchase and car loan payment were considered business income or were otherwise derived from transactions related to his company. Additionally, the Petitioner did not submit any documentation showing the funds he received from his relative to hold while on a business trip would be considered his business income or derive from some other lawful source. Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *Ho*, 22 I&N Dec. 206 at 210-11; *Izummi*, 22 I&N Dec. 169 at 195.

On appeal, the Petitioner argues USCIS made a mistake of law because it applied an incorrect, heightened standard of proof when requesting additional documentation of his employment history and business transactions. In support, the Petitioner claims he has provided his employment history and business dealings dating back decades and "[t]here is not even a hint or one shred of evidence that the funds come from illegal sources." We disagree with the contention that a heightened standard of proof was imposed on the Petitioner by requesting additional documentation of his business income and employment history. As mentioned above, the record at the time of the Chief's decision did not demonstrate the transactions in his x8002 and x8004 bank accounts would be classified as business income as claimed by the Petitioner. A petitioner must show that his or her invested capital did not derive, directly or indirectly, from unlawful means and must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(e) and 8 C.F.R. § 204.6(j)(3). Here, the Petitioner did not show, by a preponderance of the evidence, that the funds received in his personal bank accounts ending in x8002 and x8004 bank accounts derived from lawful sources.

B. Other Issues

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether the Petitioner sufficiently

documented the yearly income earned by the Petitioner and his spouse or that the Petitioner's business operations were sufficiently documented. *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 documented the lawful source of his EB-5 capital. *See* 8 C.F.R. § 204.6(e), (j)(3); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's 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 not been met.

ORDER: The appeal is dismissed.