U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13134323

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 the record did not establish, as required, that [redacted] the NCE, would create the necessary number of jobs and the Petitioner did not document the lawful source of the funds he remitted to the NCE.[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).

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

[1] The Petitioner does not allege, and the record does not demonstrate, that the NCE has already created the requisite number of jobs. *See* 8 C.F.R. § 204.6(j)(4)(i)(A).

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 she invested $500,000[3] in the NCE, which is associated with a USCIS-designated regional center [redacted] The most recent business plan claims the NCE seeks to raise up to $35,000,000 in EB-5 funds from 70 immigrant investors to loan to [redacted] the job creating entity (JCE). The JCE plans to use the EB-5 capital and other funds to renovate an existing [redacted] into a [redacted] and is located in [redacted]

The Chief issued a notice of intent to deny (NOID) the petition, notifying the Petitioner that she did not submit sufficient evidence documenting the path or lawful source of his EB-5 capital and the evidence relating to the NCE's projected employment creation did not establish that the NCE would likely create the requisite number of jobs for qualifying employees within two years. *See* 8 C.F.R. § 204.6(j)(4)(i)(B). Among other things, the Chief raised concerns regarding apparent discrepancies with the Petitioner's claimed employment, lack of evidence showing the path of claimed dividend payments, and the Petitioner's alleged associations with known criminals. After reviewing the record, the Chief denied the petition, finding that the business plan and economic reports did not demonstrate that the NCE would likely create the requisite number of jobs within two years. *See id.* The Chief also found the Petitioner did not resolve the discrepancies in the record and therefore did not demonstrate her EB-5 capital did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e). On appeal, the Petitioner contends that she 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 her EB-5 capital derived from two dividend payments of 27,084,200 rubles (RUB) and 21,667,360 RUB in 2015 and 2016, respectively, from her shares in [redacted] Bank. The Petitioner claims she earned 120,000 RUB to 250,000 RUB per month from 1998 to 2008 and 300,000 RUB to 500,000 RUB from 2008 to 2018, as an actress. According to the Petitioner, she became a superminority shareholder in [redacted] Bank on December 28, 1998, when she purchased 10,000 shares using her retained earnings. The Petitioner converted her shares in [redacted] Bank to 92,046 shares of common stock worth 418,809,300 RUB on June 7, 2011. She reinvested her earned dividends from 2011 to 2014, but had the 27,084,200 RUB and 21,667,360 RUB

[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).

dividends deposited in her [redacted] account on unspecified dates in 2015 and 2016. On December 14, 2017, the Petitioner transferred $545,000 from her [redacted] account to NCE escrow.

The Petitioner has not documented the path or lawful source of the $545,000 used as her EB-5 investment. The Petitioner submitted a letter from [redacted] Bank stating that two dividend payments were deposited in her [redacted] account in 2015 and 2016. However, the Petitioner's [redacted] statement only shows an opening balance of $5,338,649 as of December 1, 2017, as well as the Petitioner's withdrawal of her $545,000 investment fund on December 14, 2017. The record does not demonstrate the Petitioner received her dividend payments in her [redacted] account and does not otherwise identify the source of the $5,338,649 in her [redacted] account before her investment fund was remitted to NCE escrow in 2017. The record must trace the path of the funds back to a lawful source. *Ho*, 22 I&N at 210-11; *Izummi*, 22 I&N at 195. Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *Id.* Here, the Petitioner has not traced the path of her investment funds to a lawful source.

The Petitioner has also not documented the lawful source of funds used to invest in [redacted] Bank. The record contains a letter from [redacted] Bank claiming the Petitioner purchased 10,000 shares in 1998 using her retained earnings as an actress. The Petitioner also submitted an employment certification indicating the Petitioner worked as an actress since 1987. However, the Petitioner did not submit any evidence, such as bank records, that she had retained enough earnings to purchase the 10,000 shares and did not submit any evidence to show the price of the 10,000 shares she purchased in 1998. 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). The Petitioner has not provided sufficient documentation to show the funds used to purchase her shares in [redacted] Bank derived from lawful sources.

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 in her SberBank account 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 NCE would likely create the requisite number of jobs for qualifying employees within two years. *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 her 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.