U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17931301

Date: JUN. 17, 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 dismiss the appeal.

I. LAW

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). A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the new commercial enterprise. *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. The record must trace the path of the funds back to a lawful source. *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

The Petitioner indicated in his petition that on November 30, 2016, he invested $500,000[1] in [redacted] the new commercial enterprise (NCE), which is sponsored by [redacted] (Regional Center) pursuant to the Immigrant Investor Pilot Program. According to the Confidential Private Offering Memorandum, the NCE proposes to pool $15,000,000 from 30 immigrant investors and lend the entire amount to [redacted] the job-creating entity (JCE). The JCE intends to develop, construct, and operate [redacted] a 25-story building with 182 residential units and retail space in [redacted] New York.

The Petitioner asserted that he derived his investment funds through a loan of 8,000,000 Chinese renminbi (RMB) from [redacted] Commercial Bank, [redacted] Sub-branch, secured by a real property in China. The Petitioner further asserted that he purchased the real property in 2009 using a gift of RMB 5,895,620.40 from his father [redacted] The Petitioner's father claimed that in December 2009, he gifted RMB 5,800,000 to the Petitioner to purchase the real property using his employment income from [redacted] as the general manager from 1997 to 2005. The Petitioner's father also claimed that his annual income from the company was about RMB 1,000,000. In addition, the Petitioner asserted that his agent, [redacted] helped him transfer his investment funds out of China and remit to the bank account of the Regional Center, which is the general manager of the NCE.

The Chief determined that the Petitioner has not demonstrated by a preponderance of the evidence that the RMB 5,900,000 gift used by the Petitioner to purchase the real property in December 2009 derived from his father's lawful income.

On appeal, the Petitioner contends that the Chief applied a higher burden of proof standard on the property purchase funds and denied the petition because he was unable to provide his father's bank statements to prove his father's accumulated and retained funds for the property purchase. The Petitioner argues that the Chief's request for banking and transfer documentation occurred 12 years ago is unreasonable, overly burdensome, and a mistake of law as it applied a higher burden of proof standard on the secondary evidence. The Petitioner claims that the submitted documents, which include his father's resume, an affidavit of his father's co-worker, his father's statement, and enterprise credit information reports of his father's employers, had met the preponderance of evidence standard to demonstrate that his father used his lawful employment income to gift RMB 5,900,000 to the Petitioner to purchase the property.

Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Under the preponderance of the evidence standard, the evidence must demonstrate that the petitioner's claim is "probably true." *Id.* at 376. We will examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of

[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 2016 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).

the evidence, to determine whether the fact to be proven is probably true. In this case, we have reviewed each piece of evidence, both individually and within the context of the totality of the evidence, and conclude that the Petitioner has not established by a preponderance of the evidence eligibility for the visa classification sought for the reasons we will discuss below.

To support claims regarding the Petitioner's father's accumulated employment income, the Petitioner submitted a certificate from a former colleague of the Petitioner's father, [redacted] dated June 2020. Mr. [redacted] claimed that he worked at [redacted] from 2001 to 2006 and that the Petitioner's father was the general manager of the corporation from 1997 to 2005 with an annual salary of about RMB 1,000,000.

While Mr. [redacted] and the Petitioner's father have allegedly worked together at the same corporation, Mr. [redacted] did not provide further details on their employment with the corporation. Nor did he explain how he was able to attest to the Petitioner's father's employment with the corporation from 1997 to 2000 because Mr. [redacted] did not start working for the corporation until 2001. Moreover, Mr. [redacted] did not explain how he knew the Petitioner's father's annual salary from the corporation from 1997 to 2005. The employment and income assertions from Mr. [redacted] are not corroborated by the evidence on record. As a result, this limits the probative value we accord this evidence. The Petitioner has not established the claimed fact with unsupported testimonial evidence alone. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (stating that simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings).

In his statement, dated June 2020, the Petitioner's father asserted that [redacted] was a state-owned corporation so, during his employment, no individual social insurance and individual income tax were required to be paid, and he could not provide the insurance policy or tax bill. However, the record does not contain supporting documentary evidence or the applicable law in China to establish that the corporation was a state-owned corporation and that the Petitioner's father was not subject to the individual social insurance and income tax payment requirements. In general, the requirements and workings of foreign law are a question of fact, which must be proved by the petitioner. *See Matter of Hsiung*, 22 I&N Dec. 201, 203-04 (Assoc. Comm'r 1998) (finding that the petitioner has not presented any evidence as to Taiwanese law regarding the seizure of assets). Nevertheless, we determine that the Petitioner was not required to provide income tax payment certificates of his father because 8 C.F.R. § 204.6(j)(3) requires a petitioner to provide their income tax returns filed within five years by or on behalf of the petitioner, not another individual.

The Petitioner submitted credit information overview of two companies: [redacted] which were established by the Petitioner in 2012 and in 2006. The Petitioner's father's resume indicates that he served as the chairman of [redacted] in 2006 and that he has served as the chairman of [redacted] since 2012. However, the Petitioner's father did not claim that he used any portions of his employment income from these two companies to gift to the Petitioner in 2009 for the property purchase. Therefore, the credit information for two unrelated companies is not relevant in this case.

For the reasons we have discussed above, the evidence on record is insufficient to demonstrate that the Petitioner's father gifted RMB 5,900,000 to the Petitioner in 2009 for the property purchase using his accumulated employment income from [redacted] from 1997 to 2005.

In addition, the Chief pointed out the inconsistencies in the record regarding the Petitioner's father's employment history. In his resume, the Petitioner's father indicated that he worked as the general manager of [redacted] from 1997 to 2006. In his statement, dated November 2016, the Petitioner's father claimed that he worked as the general manger of [redacted] from 1997 to 2005. The name of the Petitioner's father's claimed employer and employment termination date are different. These consistencies call into question the credibility of the Petitioner's father's statement regarding the claimed source of the gift funds, which were used by the Petitioner to purchase the real property that was used as collateral for the loan obtained by the Petitioner for his investment in the NCE. The Petitioner on appeal does not offer independent objective evidence to resolve these inconsistencies in the record. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, the sales invoice for the property purchase shows that the property was purchased by the Petitioner in December 2009 for RMB 5,895,640.40. The Petitioner's father stated that he gifted RMB 5,800,000, not RMB 5,900,000, to the Petitioner in December 2009 for the property purchase. The record is silent as to the source of the remaining purchase funds (RMB 95,640.40) to establish that the property was purchased using funds obtained through lawful means.

Because the funds used to purchase the real property have not been shown to derive from lawful means by a preponderance of the evidence due to insufficient evidence and inconsistencies in the record, the loan proceeds have not been shown to derive from lawful means as the real property was used as collateral for the loan. *See* 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210.

Moreover, the claims that the invested funds were not only derived from lawful means but that they were also accumulated and maintained without being commingled with funds not shown to derive from lawful means have not been shown by a preponderance of the evidence.

The loan receipt from [redacted] Commercial Bank [redacted] Bank) shows that the loan proceeds of RMB 8,000,000 were deposited into the Petitioner's [redacted] Bank account on September 18, 2015. The Petitioner's transaction receipt from [redacted] Bank, dated November 23, 2016, shows that on November 23, 2016, the Petitioner requested to transfer RMB 3,500,000 from his [redacted] Bank account to his claimed agent, [redacted] Bank account for the currency exchange to U.S. dollars and remittance to the bank account of the Regional Center in the United States – more than a year after the loan disbursement. The Petitioner's bank statements for his [redacted] Bank account do not show that the loan proceeds were maintained in his [redacted] Bank account without commingling with funds from other sources not shown to derive from lawful means.

On September 18, 2015, RMB 8,000,000 was withdrawn from the Petitioner's [redacted] Bank account – shortly after the loan proceeds were deposited into this account on the same day. Various amounts were deposited into this account from unknown sources on various dates after the initial loan

disbursement on September 18, 2015 and before the withdrawal of RMB 3,500,000 on November 23, 2016 for the Petitioner's investment in the NCE. As of August 21, 2016, the Petitioner had RMB 11,086.77 in this account. On September 13, 2016, RMB 8,030,000 was deposited into this account from an unknown source. The Petitioner's transfer request was cleared on November 24, 2016, and RMB 3,500,000 was withdrawn from this account on November 24, 2016. On November 24, 2016 - shortly before the withdrawal of the RMB 3,500,000 from this account, a total of RMB 3,500,050 was deposited into this account from unknown sources. As such, the record does not reflect that the loan proceeds were maintained in the Petitioner's [redacted] Bank account without commingling with funds from other sources not shown to derive from lawful means. *See Matter of Izummi*, 22 I&N Dec. at 195; *Matter of Ho*, 22 I&N Dec. at 210-11.

The Chief also determined that the Petitioner has submitted inconsistent documentation regarding the path of funds and that he has not demonstrated by a preponderance of evidence that the transfer of funds in the United States by [redacted] on behalf of the Petitioner was lawful. In light of our discussion on the source of funds, we will reserve the path of funds issues and other eligibility issues for future consideration should the need arise.[2]

III. CONCLUSION

As the record does not sufficiently demonstrate that the funds invested by the Petitioner were obtained through lawful means, the Petitioner has not shown by a preponderance of the evidence that he is eligible 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).