U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12573814

Date: JUN. 22, 2012

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] (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 on November 21, 2017.[3] According to the submitted business plan, the NCE seeks to raise up to $200,000,000 in EB-5 funds from 400 foreign national investors to loan to [redacted] the job-creating entity (JCE). The JCE plans to use the EB-5 capital and other funds for the development and operation of a scrap metal recycling and steel metal mill facility in [redacted].

In this case, the Petitioner alleges that her EB-5 capital derived from a 3,900,000 renminbi (RMB) gift from her parents, [redacted] and [redacted] The record indicates the Petitioner's parents obtained the gift funds from a mortgage loan secured by the parents' property. According to a Fund Exchange Agreement dated November 9, 2017, [redacted] sought the assistance of [redacted] to exchange the RMB funds into USD. In accordance with the agreement [redacted] remitted 3,796,725 RMB of the mortgage loan proceeds to [redacted]'s [redacted] Bank of China account on November 10, 2017. In return, [redacted] remitted $555,500 from [redacted]'s [redacted] bank account to the Petitioner's [redacted] Bank on the same day.[4] The Petitioner then remitted her EB-5 investment funds to the NCE on November 17, 2017.

The Chief issued a request for evidence (RFE) and notice of intent to deny (NOID) requesting documentation showing the lawful source and path of the $555,500 the [redacted] remitted to the Petitioner. The Chief requested the Petitioner provide bank statements corroborating the [redacted] received and retained $971,250 in sales the company allegedly received prior to remitting the $555,500 to the Petitioner. The Chief also requested the Petitioner provide supporting documents to show "the [c]ompany's financial status, cash on hand, and/or income." The Petitioner then provided the [redacted]s [redacted] statement showing transactions from October to November 2017.

After reviewing the record in its entirety, the Chief observed that the Petitioner had not provided documents showing the [redacted]'s financial status, cash on hand, or income. The Chief denied the petition, concluding the record lacked sufficient evidence to demonstrate the [redacted] "accrued and maintained the USD funds in the [c]ompany's [redacted] accounts" and the company appeared to have financial difficulties leading to [redacted] closing its business account in October 2018

[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).

[4] The Petitioner submitted evidence that [redacted] is the owner of [redacted]

therefore the Petitioner did not establish the lawful source or path of her EB-5 investment. On appeal, the Petitioner asserts the evidence already in the record establishes the lawful source and path of the funds [redacted] remitted to her as her EB-5 investment fund. The record contains invoices from [redacted] indicating it had $971,250 in sales during the month of October 2017. The Petitioner submitted the company's October and November 2017 bank statement in response to the NOID which shows a deposit of $798,000 on October 27, 2017, as well as deposits of $34,650 and $138,600 on November 2, 2017 which align with the prepayments and deposits listed as due in the provided invoices. The bank statement shows that the company had a balance of $777,129.50 prior to remitting the EB-5 investment fund to the Petitioner's account. 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 takes issue with the Petitioner's failure to provide additional financial documentation from [redacted], due to its purported financial problems that led to its bank account being closed in 2018. However, the Chief did not identify the relevance of the company's financial problems or its impact on the lawful source of funds it remitted to the Petitioner in 2017. The record indicates the company had sales sufficient to cover the funds remitted to the Petitioner, received these funds in its bank account, and briefly held the funds before forwarding the USD funds on to the Petitioner. Absent any negative considerations regarding the financial stability of [redacted], 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 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.