U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16045278

Date: MAR. 1, 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).[1] This fifth preference (EB-5) classification makes immigrant visas available to noncitizens 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 she placed at least $500,000[2] of her own capital at risk, and that she did not document the lawful source of the funds she claimed to have invested in [redacted] the NCE, which is associated with [redacted].[3] On appeal, the Petitioner submits a brief and maintains that she has shown her eligibility for the EB-5 classification.

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

A noncitizen may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. A noncitizen may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. Regional centers can pool immigrant

[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the EB-5 program, including the designation of targeted employment areas and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed her petition in March 2017, the relevant law then in existence governs this appellate adjudication.

[2] The Petitioner indicated 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(f)(2) (2017).

[3] [redacted] is an entity that U.S. Citizenship and Immigration Services (USCIS) has designated to participate in the EB-5 program. 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) (2017).

(and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii) (2017).

A noncitizen must demonstrate that they have placed their own capital at risk in the NCE. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998) (stating that "[a] petitioner must . . . establish, pursuant to 8 C.F.R. § 204.6(e), that funds invested are [their] own"). In addition, the noncitizen must show that their 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. at 210-11; *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.[4] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

In this case, the Petitioner claims to have invested at least $500,000 in the NCE. According to pages 4 and 5 of the January 2017 business plan, the NCE seeks to solicit funds from noncitizen investors to lend to [redacted] to develop, construct, and operate [redacted] a three-tower mixed-use project in [redacted] New York.

The Petitioner explained in a March 2017 letter from her counsel that her EB-5 capital derived from "a monetary gift from her mother" and "her grandparents . . . in the amount of RMB [Chinese Renminbi] 3,787,150 (i.e. USD [$] 550,000) with no expectation of return or repayment." The letter states that in December 1999, the Petitioner's mother purchased a property in [redacted] China, for RMB 396,007. The Petitioner's mother and her grandparents were listed as owners of the property. In February 2017, they sold the property for RMB 4,400,000 and gifted RMB 3,787,150 to the Petitioner to invest in the NCE.

The record includes insufficient evidence confirming the lawful source of funds that the Petitioner's mother and/or grandparents used to purchase the [redacted] property. Specifically, while the Petitioner alleges that her mother's savings financed the purchase, she has not submitted sufficient evidence showing that her mother had accrued or saved enough funds for the purchase. As supporting evidence, the Petitioner has offered the "House Handover Letter" from the seller, stating that the Petitioner's mother and grandparents "ha[d] paid up the total price" of RMB 396,007 as of December 6, 2000. The record also includes copies of "Invoice Sheet," showing that the Petitioner's mother and/or grandparents made several payments for the property in 1999 and 2000. The record, however, does not include documents, such as bank or financial records, tracing the payments to lawful sources.

The Petitioner alleges that her mother's savings from her income financed the December 1999 property purchase. According to an undated letter from [redacted] the Petitioner's mother

[4] 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).

worked as the company "Project Executive . . . from November 1995 to December 2000" and that her "total remuneration including basic salaries and bonus during the period is about HKD 900,000." In response to the Chief's response for evidence, the Petitioner has presented an online printout about [redacted] and an undated statement from her mother. Her mother declared in the statement that she worked for [redacted] between November 1995 and December 2000, and received "about HKD 900,000 (i.e. RMB 900,000) which is more than sufficient for [her] to purchase the [redacted] property for RMB 396,007 on December 6, 1999." These documents constitute evidence of the Petitioner's mother's income, not her savings.

As noted in the Chief's denial, the Chief requested the Petitioner to submit "sufficient financial records or other sufficient evidence to demonstrate that [her] mother accrued/maintained the funds from lawful source(s) in her account(s) that were used to purchase the property." The Petitioner, however, has not presented such evidence. On appeal, the Petitioner argues that it is "unreasonable, unrealistic and unduly burdensome" to provide such evidence. While we acknowledge the passage of time since the possible creation of these documents, we find that without additional corroborating evidence, evidence of income is insufficient to establish how much of the income the Petitioner's mother retained or saved, and is insufficient to document the lawful sources of the payments she made in 1999 and 2000 to purchase the property. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195; *see also Mo v. USCIS*, __ F. Supp. 3d __, 2024 WL 804267, *6 (D.D.C. Feb. 27, 2024) (noting that USCIS did not err in requesting proof of household expenditure from 20 years ago).

Moreover, the Petitioner acknowledges that she engaged in "Fund Exchange" or currency swap with a friend[5] "to help [her] transfer the investment funds out of China and then remitted it to the U.S." The record is insufficient to document the lawful source of the $550,000 her friend remitted to the NCE's escrow account as the Petitioner's EB-5 investment.[6] The record includes bank statements showing that the Petitioner transferred a total of RMB 3,787,100 to her friend in four transactions on February 23, 2017. Her friend's bank statement shows that on February 21, 2017, before receiving funds from the Petitioner, the account received a $550,000 deposit. *See Matter of Ho*, 22 I&N Dec. at 210-11 (noting that bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source). Then two days later, on February 23, 2017, her friend's account issued a $550,000 check, payable to the NCE's escrow account, noting that it was "EB-5 Investment for [the Petitioner]."

The Petitioner has not sufficiently established the path of funds she purportedly invested in the NCE. Specifically, she has not shown that the RMB 3,787,100 she remitted to her friend ever left China. Additionally, she has not demonstrated the lawful source of the February 21, 2017, deposit of $550,000 that her friend received, which financed the $550,000 check that she claimed was her EB-5 investment. In short, the Petitioner has not sufficiently documented the path of her EB-5 investment funds from her mother and her grandparents' monetary gift to funds that her friend sent to the NCE's escrow account via a check. *See Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. Without additional

[5] The Petitioner referred to her friend as her "Agent" in a March 2017 letter from her counsel. The record, however, does not contain evidence confirming that her friend has ever been an authorized currency exchange agent.

[6] Federal courts have found that USCIS has properly inquired into the legality of currency swaps in EB-5 cases. *See Nguyen v. USCIS*, 637 F. Supp. 3d 822, 831-36 (C.D. Cal. Oct. 27, 2022), *aff'd*, No. 22-56068, 2023 WL 8251320 (9th Cir. Nov. 29, 2023); *Truong v. USCIS*, Civil Action No.: 21-316 (RC), 2023 WL 4234658 (D.D.C. Jun. 28, 2023).

corroboration, the Petitioner has not demonstrated the lawful source of her purported EB-5 investment. *See* 8 C.F.R. § 204.6(j)(3), (e).

III. CONCLUSION

For the reasons we have discussed above, we conclude that the Petitioner has not established, by a preponderance of the evidence, her eligibility for the classification. Specifically, she has not documented the lawful source of the funds her mother used to purchase the [redacted] property, the sale proceeds of which her mother and grandparents gifted to her as EB-5 investment capital. In addition, she has not documented the path of the funds her friend remitted to the NCE's escrow account as her EB-5 investment capital.

It is the Petitioner's burden to demonstrate her eligibility for the EB-5 classification, which includes establishing the lawful source of her purported EB-5 investment. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Here, the Petitioner has not made such a showing.

ORDER: The appeal is dismissed.