U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 4607426

Date: MAR. 2, 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, finding that the Petitioner did not establish that she invested or was in the process of investing her own funds in [redacted] the NCE.[1] *See* 8 C.F.R. § 204.6(e), (j) (2014).[2] Specifically, the Chief found that the Petitioner's form of investment – proceeds from a loan that was secured by her mother's property – did not meet the regulatory definition of "capital." *See* 8 C.F.R. § 204.6(e).

We then dismissed the Petitioner's appeal, affirming the Chief's denial. In addition, we noted in our decision that the NCE's corporate documents included inconsistent evidence concerning whether the NCE had guaranteed the return of her investment. *See Matter of Izummi*, 22 I&N Dec. 169, 183-88 (Assoc. Comm'r 1998) (providing that "[f]or the alien's money truly to be at risk, the alien cannot enter into a partnership knowing that he already has a willing buyer in a certain number of years, nor can he be assured that he will receive a certain price"). Subsequently, we reopened the proceeding and issued a request for evidence (RFE) to allow the Petitioner to address the deficiencies discussed in the Chief's denial and our earlier decision. The Petitioner timely responded, submitting a brief and additional supporting documentation.

In light of the Petitioner's RFE response, we find that she has sufficiently overcome the basis of the Chief's denial and resolved the additional concern we raised in our earlier decision. Specifically, she has established that at the time she filed the petition in April 2014, she invested cash in the NCE.

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[1] The record shows that the NCE is associated with [redacted] a U.S. Citizenship and Immigration Services (USCIS) designated regional center to participate in the EB-5 program. *See* 8 C.F.R. § 204.6(e) (defining a regional center as an economic unit that is involved with the promotion of economic growth, "including . . . improved regional productivity, job creation, and increased domestic capital investment").

[2] 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).

See Zhang v. USCIS, 978 F. 3d 1314, 1319-22 (D.C. Cir. 2020). Thus, her form of investment meets the definition of "capital" under 8 C.F.R. § 204.6(e), which lists cash as an acceptable form of investment. In addition, the Petitioner has presented additional documentation that corrects inconsistencies within the NCE's organizational documents, bringing the documents into conformity with other evidence submitted at the time she filed the petition. *See Izummi*, 22 I&N Dec. at 175-76. She has therefore shown that the NCE did not guarantee the return of her investment.

Accordingly, the Petitioner has established eligibility for the EB-5 classification. 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 been met.

ORDER: The appeal is sustained.