U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Y-Y-

DATE: MAR. 6, 2019

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: 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 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 record did not establish, as required, the lawful source of the Petitioner's invested funds.

On appeal, the Petitioner submits additional evidence and asserts that the record establishes eligibility for the benefit sought.

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,[1] as the Petitioner has done in this case. 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).

The invested capital must not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e) (defining capital). To show the lawful source of the capital, a petitioner must

[1] A regional center is an economic unit involved with the promotion of economic growth through "improved regional productivity, job creation, and increased domestic capital investment." *See* 8 C.F.R. § 204.6(e).

submit evidence such as foreign business and tax records or documentation identifying any other source(s) of funds. 8 C.F.R. § 204.6(j)(3). Bank letters or statements corroborating the deposit of funds, by themselves, are insufficient. *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. *Ho,* 22 I&N Dec. at 210-11; *Izummi,* 22 I&N Dec. at 195.[2] *See also* 6 *USCIS Policy Manual* G.2(A)(2), (4), https://www.uscis.gov/policymanual.

II. ANALYSIS

The Petitioner invested $500,000[3] in the NCE, which is associated with a regional center, (the Regional Center). The NCE proposes to loan up to $110,000,000 of EB-5 capital to and the JCEs, to develop mixed use residential and retail buildings.

The Petitioner indicated in the initial filing that her $500,000 EB-5 "capital investment funds came from her husband, employment income." She further stated in the cover letter accompanying the 2016 petition that worked at from September 2009 to October 2013 and at since December 2013, earning approximately RMB 5,500,000, and RMB 1,700,000 during these respective time periods. In August 2016, she and "decided to pursue an EB-5 Visa" and conducted multiple currency transfers between August and September 2016, with a final transfer of $544,922 to the NCE.

The Chief issued a request for evidence (RFE) and notice of intent to deny (NOID), in part, for additional documentation that demonstrated the Petitioner's investment funds, purportedly derived from her spouse's employment, were available at the time of the 2016 investment into the NCE. In her NOID response, the Petitioner provided a different explanation of the source of her investment funds. She asserted for the first time that her EB-5 capital derived from reimbursements for a loan provided to her parents for their 2012 property purchase, and specified that her parents "paid back the full amount of the loan to [the] Petitioner in August 2016." The Chief denied the petition, finding that the Petitioner failed to resolve multiple inconsistencies related to the source and path of the investment funds and had not established that her investment funds derived from lawful means.

On appeal, the Petitioner asserts that her "investment capital of $500,000 was derived from her husband's employment income" and "in support of the petition" she provided his personal statement regarding his employment history; "a labor contract with the last employer,

[2] These requirements confirm that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States* 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003) (holding that a petitioner had not established the lawful source of her funds because she did not designate the nature of all of her employment or submit five years of tax returns).

[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).

from December 2013 to December 2016; and tax payment certificates from 2010 to 2016, "which totaled over RMB 8 million." She states that she submitted additional income certificates and her husband's tax payment certificates from 2014 to 2017 in her RFE response. The Petitioner asserts that "the fact that after earning [her husband's employment] income, the fund was loaned to [her] parents to assist them in their purchase of a property and making payment on the mortgage loan does not change the nature of how it was initially obtained." She contends that "since no new additional money was obtained from the loan to the Parents, such as interest, the source of the invested fund remains that of the Husband's employment income" and the "alleged inconsistency in the source of funds description does not exist and shall not have discredited all other evidence submitted with the petition."

The submitted documentation, such as the "Housing Sales Contract" and "Individual Loan/Guarantee Contract," indicates the Petitioner's parents purchased a property located at for RMB 5,960,000 and her mother, borrowed RMB 3,000,000 from Industrial and to finance part of the total purchase price. According to the parents' 2018 statement, the Petitioner and her husband paid the RMB 2,960,000 down payment and repaid the RMB 3,000,000 mortgage loan. In 2012, the Petitioner's husband paid a total of RMB 800,000 to the real estate developer's account and the Petitioner paid RMB 2,160,000 to the developer's account. "All of the loan repayments were transferred from [the Petitioner's account]" to her mother's account and in August 2013 "[t]he mortgage loan of RMB 3,000,000" was settled. The RMB 5,960,000 loan to the Petitioner and her husband "was repaid in full" in August 2016 by the Petitioner's father. According to the Petitioner's NOID response, her parents sold the property in December 2015 for a total of RMB 6,295,000 and used those funds to repay her RMB 5,960,000 loan in 2016.

In light of the Petitioner's inconsistent explanations concerning the source of her investment funds, the evidence does not demonstrate that her EB-5 investment capital originated from her husband's employment income as initially claimed or otherwise derived, both directly and indirectly, from lawful means. The submitted documentation, to include various banking transfer receipts and account statements, does not demonstrate that the RMB 5,960,000 the Petitioner received from her father in 2016 derived from her husband's 2009-2013 employment income.

Though the Petitioner claimed in her NOID response that her father transferred a total of RMB 5,960,000 in August 2016, and referred to her 2016 bank account statements as evidence of the incoming transfers, the record does not contain supporting documentation to show the source of her father's funds in his bank account prior to the six transfers. As noted in the Chief's denial, the evidence does not include her father's bank statements to show the source and path of his funds. Specifically, the submitted documentation does not demonstrate the source of funds in her father's account prior to the August 2016 transfers and does not establish that the RMB 5,960,000 repayment to the Petitioner derived from either the property sale or accumulated employment income earned by

her husband. On appeal, the Petitioner does not provide her father's bank account statements or an explanation of their absence from the record.

The Petitioner must resolve 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). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* Here, the Petitioner has not resolved the inconsistencies concerning the source of her investment funds. Moreover, the Petitioner must establish her eligibility for the benefit requested at the time of filing and must continue to be eligible through adjudication. *See* 8 CFR § 103.2(b)(1).

The Petitioner has not shown that her EB-5 investment capital of $500,000 derived from her husband's employment income as initially claimed and thus has not established that her invested capital derived, directly and indirectly, from lawful means. *See* 8 C.F.R. §§ 204.6(e), 204.6(j)(3). In addition, she has not demonstrated "the path of the funds back to a lawful source." *See Ho,* 22 I&N Dec. at 210-11; *Izummi,* 22 I&N Dec. at 195; and 6 *USCIS Policy Manual* G.2(A)(2), (4).

III. CONCLUSION

The Petitioner has not established that her invested capital derived, directly and indirectly, from lawful means. 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.

Cite as *Matter of Y-Y-*, ID# 1934577 (AAO Mar. 6, 2019)