U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 05586130

Date: MAR. 6, 2020

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 he remitted to [redacted], the NCE. The Chief subsequently denied the Petitioner's motion to reopen the matter. On appeal, the Petitioner maintains that he has shown eligibility for the EB-5 classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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. 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, 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.[1] *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

The Petitioner indicates he invested $1,000,000 in the NCE.[2] According to the March 2014 business plan, the NCE plans to market and sell [redacted] brand wine cooler products. For the reasons discussed below, we find the Petitioner has not established, by a preponderance of the evidence, eligibility for the EB-5 classification.

In this case, the Petitioner alleges that his EB-5 capital derived from the 7,300,000 renminbi (RMB) in proceeds from the sale of his ownership interest in a business[3] as well as 5,300,000 RMB in proceeds from a loan made to his friend, [redacted]. The records indicates the Petitioner received the 7,300,000 RMB in his [redacted] Bank account ending in 7152 on March 18, 2013. According to a loan agreement dated March 20, 2013, the Petitioner agreed to lend 5,300,000 RMB to [redacted] who was required to repay the principal by December 31, 2013, or be charged 15% interest. On March 27, 2013, the Petitioner exchanged 311,245 RMB of the sale proceeds and transferred the $50,000 into his [redacted] bank account ending in 8833. [redacted] remitted $855,000 in loan installment payments to the Petitioner's [redacted] bank account ending in 8833 from March 23, 2013 to April 24, 2013. The Petitioner claims he remitted $100,000 to the NCE from his [redacted] bank account ending in 8833 on April 17, 2013, to buy out the NCE's former shareholders and remitted the remaining $900,000 to the NCE from the same bank account in 11 wire transfers from April 17, 2013 to October 16, 2013.

The Chief issued a notice of intent to deny (NOID) requesting, among other things, the Petitioner provide evidence of the source and path of the funds deposited into and remitted from his [redacted] Bank and [redacted] accounts. The Petitioner responded to the request with a [redacted] Bank transaction receipt showing [redacted] received 5,300,000 RMB from the Petitioner on March 24, 2013, as well as a statement from [redacted] whereby he reiterated that he borrowed the RMB from the Petitioner and then made $855,000 of installment payments to the Petitioner. The Chief then denied the petition concluding that the Petitioner failed to document the lawful sources of his investment funds. More specifically, the Chief determined that the Petitioner did not provide sufficient evidence to identify the source(s) of the deposits made in his [redacted] account.

The Petitioner filed a timely motion to reopen the matter providing, as new evidence, [redacted]'s [redacted] bank statement for account ending in 2223 dated March 4 to September 21, 2013, and [redacted]'s signed declaration dated August 9, 2016. [redacted] claimed he discovered, after withdrawing

[1] 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).

[2] The required amount of capital for investments in a NCE located outside of a targeted employment area is $1,000,000. *See* 8 C.F.R. § 204.6(f)(1)-(2).

[3] The business is listed as [redacted]

5,300,000 RMB from his [redacted] Bank account, there were "limitation[s] on the amount of money each person can carry or transfer from Mainland China to [redacted]" and "[s]o I had to carry the money to [redacted] and deposit in [the Petitioner's [redacted] account in installments during my visits." The Chief dismissed the motion to reopen after determining the new evidence did not overcome the deficiencies identified in the previous denial because the evidence was not sufficient to demonstrate the lawful source or path of the funds transferred from [redacted]'s [redacted] Bank account to the Petitioner's [redacted] account. More specifically, the Chief determined "[i]t is unclear when [redacted] traveled to [redacted] to deposit these funds into [the] Petitioner's account, when or how [redacted] exchanged the RMB to USD, or the whereabouts of the funds after [redacted] withdrew them from his [redacted] Bank account [ending in 3322]."

On appeal, the Petitioner claims he submitted sufficient evidence of the lawful source and path of his funds and USCIS failed to apply the correct burden[4] of proof. The Petitioner argues the Chief applied a heightened standard of proof because [redacted]'s declaration and [redacted] Bank account statements "reasonably explained the relationship between the withdrawal of 6,000,000 RMB from [redacted] [redacted] Bank account and the deposits in [the] Petitioner's [redacted] account, both of which transactions were well documented." 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. 369, 375-76 (AAO 2010). 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 the evidence, to determine whether the fact to be proven is probably true.

We find that the record before us is not sufficient to demonstrate the Petitioner's EB-5 investment derived from a lawful source of funds. The Petitioner has not provided sufficient evidence of the path of the funds from [redacted]'s [redacted] Bank account to the Petitioner's [redacted] account. *See Izummi*, 22 I&N Dec. at 195 (noting that a petitioner must show that the funds were his or her own by "document[ing] the path of the funds"). [redacted] claims to have withdrawn RMB funds from his [redacted] Bank account in mainland China and then deposited USD funds into the Petitioner's [redacted] account in [redacted] during [redacted]'s visits to [redacted]. However, as the Chief mentioned in her dismissal, the Petitioner did not submit evidence of how [redacted] exchanged RMB into USD or any records of [redacted]'s travels to [redacted]. Additionally, the Petitioner has not provided sufficient evidence of the lawful source of the USD funds deposited in his [redacted] account as the statement from [redacted] and submitted bank statements do not adequately demonstrate how [redacted] obtained the USD funds. 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). For these reasons, the Petitioner has not demonstrated the lawful source or path of his EB-5 investment funds. *See* 8 C.F.R. § 204.6(e).

III. CONCLUSION

[4] While the Petitioner mentions the burden of proof, he, in effect, argues USCIS must weigh the evidence using the preponderance of the evidence standard of proof.

Based on the reasons stated above, we conclude that the Petitioner has not presented sufficient evidence tracing the path of the funds he received from [redacted] to a lawful source. *See* 8 C.F.R. § 204.6(e), (j)(3); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. He has therefore not established by a preponderance of the evidence the lawful source of the funds he claims to have invested in the NCE.

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.