U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 09709678

Date: MAR. 12, 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, 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. On appeal, the Petitioner submits additional evidence and asserts that the record establishes his eligibility for the benefit sought.

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, as in this case, or through a regional center.

Furthermore, 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 $500,000[2] in the NCE on August 20, 2018. According to the business plan, the NCE provides software products that support information technology services in the healthcare, education, media, and telecom industries. The NCE intends to create 10 qualifying jobs by expanding their operations.

The Chief issued a request for evidence (RFE) and notice of intent to deny (NOID) the petition, notifying the Petitioner that, amongst other things, he did not submit sufficient evidence documenting the lawful source of his EB-5 capital. The Chief raised concerns regarding insufficient documentation showing the lawful source of gift funds used as part of the Petitioner's EB-5 investment fund. After reviewing the record, the Chief denied the petition, finding that the Petitioner had not submitted sufficient evidence indicating the $26,000 in gift funds derived from lawful sources. On appeal, the Petitioner contends that he has shown his eligibility for the classification and offers additional documentation.

In this case, the Petitioner alleges that his $524,000[3] EB-5 investment funds derived from $36,000 in gift funds from four friends and family members, $25,000 in rental income payments, $400,000 from the sale of real property, and $39,000 in retained earnings from the Petitioner and his spouse's employment. The record at the time of the Chief's decision indicates the Petitioner made the following remittances to the NCE: $85,000 on March 22, 2018; $40,000 on May 15, 2018; $10,000 on May 16, 2018; $25,000 on August 17, 2018; and $364,000 on August 20, 2018. At issue in this case is the $26,000 in gift funds that were remitted to the NCE between March and May of 2018.

On appeal, the Petitioner submits additional evidence concerning the source of the gift funds belonging to [redacted], [redacted], [redacted] and [redacted] that the Petitioner did not present to the Chief such as business records, proof of employment, and additional bank statements. The Petitioner, however, had already been put on notice of the required evidence, was given a reasonable opportunity to provide the evidence through the Chief's RFE and NOID, and the evidence was reasonably available to the affected party at the time it was supposed to have been submitted.[4] On appeal, the Petitioner claims that [redacted] is currently on travel and unable to provide his source of funds documentation, however the Petitioner did not indicate that the evidence submitted on appeal was not reasonably available at the time of the NOID. We will therefore review the record

[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 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).

[3] The record indicates the Petitioner invested an extra $24,000 of surplus funds into the NCE.

[4] *See Oyeniran v. Holder*, 672 F.3d 800, 808–09 (9th Cir. 2012) ("It is not sufficient that the evidence physically existed in the world at large; rather, the evidence must have been reasonably available to the petitioner."). *See also INS v. Doherty*, 502 U.S. 314, 324 (1992) (the Attorney General did not abuse his discretion by denying motion to reopen to apply for asylum and withholding based on lack of new material evidence).

without considering the additional evidence submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose").

The Petitioner has not documented the lawful source of the gift funds. The record at the time of decision indicates the Petitioner received $10,000 from [redacted] $7,000 from [redacted] $4,000 from [redacted], and $5,000 from [redacted] as gifts. The Petitioner claims that [redacted]'s $10,000 was remitted to the NCE as part of the first $85,000 investment funds sent to the NCE on March 22, 2018, however the Petitioner did not provide any documentary evidence showing the lawful source of the funds provided from [redacted] The remaining $16,000 in gift funds were deposited in the Petitioner's [redacted] bank account in May 2018 and then remitted to the NCE the same month. While the Petitioner provided gift letters from each of the four individuals, the record does not contain sufficient documentation to show any of the gifted funds derived from lawful sources. The record contains [redacted]'s [redacted] Bank of [redacted] statement providing a snapshot of the funds in the account from January to February 2018 but does not detail the lawful source of the gift funds. Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *Ho*, 22 I&N Dec. at 210-11 *Izummi*, 22 I&N Dec. at 195. The Petitioner also submitted a [redacted] organizational chart indicating [redacted] is employed as a software engineer, however this chart does not indicate [redacted]'s dates of employment or rate of pay and is insufficient to show [redacted]'s $5,000 gift to the Petitioner derived from this income. Based on these reasons, the Petitioner has failed to show the $26,000 in gift funds did not derive from unlawful sources as required by 8 C.F.R. § 204.6(e).

On appeal, the Petitioner argues USCIS made a mistake of fact because the Petitioner submitted a surplus of $24,000 to the NCE but only $2,000 of the gift funds need be considered as part of the $500,000 lawful source of funds analysis. We disagree. The surplus $24,000 was remitted to the NCE on August 20, 2018, from the proceeds of the Petitioner's sale of real property while all of the gift funds had been deposited into the Petitioner's [redacted] bank account and remitted to the NCE as of May 2018. The petitioner bears the burden of showing that his or her invested capital did not derive, directly or indirectly, from unlawful means and must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(e) and 8 C.F.R. § 204.6(j)(3). Here, for the reasons discussed, the Petitioner has not made such a showing.

B. Other Issues

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the failure to identify all sources of capital by additional investors in the NCE. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

## III. CONCLUSION

The Petitioner has not documented the lawful source of his EB-5 capital. *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.

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.