U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 06368356

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 the record did not establish, as required, that [redacted] the NCE, would create the necessary number of jobs and the Petitioner did not document the lawful source of the funds she remitted to the NCE.[1] On appeal, the Petitioner submits additional evidence and asserts that the record establishes her 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 or through a regional center,[2] as the Petitioner has done in this case. Regional centers apply for designation as such with the United States Citizenship and Immigration Services (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, as it is the case here, or by one or more separate entities known as the "job creating entity."

[1] The Petitioner does not allege, and the record does not demonstrate, that the NCE has already created the requisite number of jobs. *See* 8 C.F.R. § 204.6(j)(4)(i)(A).

[2] 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).

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. [3] *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

The Petitioner indicates she invested $500,000[4] in the NCE, which is associated with a USCIS-designated regional center, [redacted] The record includes two business plans and economic reports. These documents claim the NCE seeks to raise up to $125,000,000 in EB-5 funds from 250 immigrant investors to loan to [redacted], the job creating entity (JCE). The JCE plans to use the EB-5 capital and other funds to construct, develop, and operate a [redacted] wind turbine farm located in [redacted] CA. The Petitioner indicates in the appellate brief that the goal of the NCE is to "construct and operate 80 wind turbines with the capacity to generate [redacted] of electricity, creating a source of renewable energy within the predominantly agricultural area." The business plans and economic reports claim the NCE will create 2,570 jobs during the construction and operation phases of the project. [5]

The Chief issued a notice of intent to deny (NOID) the petition, notifying the Petitioner that she did not submit sufficient evidence documenting the path or lawful source of his EB-5 capital and the evidence relating to the NCE's projected employment creation did not establish that the NCE would likely create the requisite number of jobs for qualifying employees within two years. *See* 8 C.F.R. § 204.6(j)(4)(i)(B). Among other things, the Chief raised concerns regarding a lack of evidence demonstrating the path of her investment funds, extensive delays in the project's construction, and a lack of evidence showing the source of the project funds as claimed in the business plan. In the NOID response, the Petitioner presented additional evidence, including the NCE's April 2017 business plan and maintained that she had satisfied the lawful source of funds and employment creation requirements.

After reviewing the record, the Chief denied the petition, finding that none of the business plans or economic reports demonstrated that the NCE would likely create the requisite number of jobs within two years. *See* 8 C.F.R. § 204.6(j)(4)(i)(B). The Chief also found the Petitioner did not document the path of her investment funds or document the sale of the Petitioner's business and therefore did not

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[3] 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).

[4] 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).

[5] The economic reports indicate that the construction phase of the project will be less than two years, and thus, credit the NCE with creating indirect jobs during the construction of the project, as well as direct and indirect jobs during its operation. *See* USCIS Policy Memorandum PM-602-0083, *supra*, at 17; *see also* 6 *USCIS Policy Manual*, *supra*, at G.2(D)(3) (qualifying jobs are those lasting at least two years).

demonstrate her EB-5 capital did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e). On appeal, the Petitioner contends that she has shown her eligibility for the classification and offers additional documentation.

A. Path and Source of the Petitioner's EB-5 Capital

In this case, the Petitioner alleges that her EB-5 capital derived from $500,000 in proceeds from the sale of her equity interest in [redacted] The record indicates the Petitioner earned 1,813,337.40 renminbi (RMB) while employed as a business development director from January 2006 to December 2010. The Petitioner claims she used 200,000 RMB of retained earnings to found a business, [redacted] on July 30, 2010. The Petitioner sold her shares in [redacted] for a total of 5,134,000 RMB in September 2014, and then remitted her $500,000 investment fund to the NCE on May 18, 2016. The Chief denied the petition finding, in part, the Petitioner did not demonstrate, by a preponderance of the evidence, that the funds she remitted to the NCE as part of her EB-5 investment derived from lawful sources. More specifically, the Chief determined the Petitioner had not documented the complete path of funds from the sale of the Petitioner's business equity to the time the funds were remitted to the NCE. Additionally, the Chief found the Petitioner had not documented the transfer of funds from the purchaser of the Petitioner's business equity and therefore did not sufficiently document the source or path of her investment fund.

On appeal, the Petitioner offers additional evidence concerning the source of the USD funds she remitted to the NCE that she did not present to the Chief. For example, the Petitioner offered, for the first time on appeal, a Foreign Exchange Statement dated November 17, 2018, indicating the Petitioner enlisted the help of various friends and family members to help exchange her business equity sales proceeds into USD funds. The Petitioner also offers, for the first time, business agreements from 2013 and 2014 documenting the sale of her business equity as well as more detailed bank statements from the Petitioner's [redacted] Bank account. The Petitioner, however, had already been put on notice of the required evidence, was given a reasonable opportunity to provide the evidence, and the evidence was reasonably available to the affected party at the time it was supposed to have been submitted.[6] The Chief issued a NOID requesting more information regarding the source of the Petitioner's funds because she had not shown, with documentary evidence, how any of the Petitioner's claimed funds or sales proceeds were used in her EB-5 investment. The Chief additionally informed the Petitioner that the record lacked sufficient evidence to document the path of funds to the Petitioner's investment in the NCE. The documents submitted on appeal appear to have been reasonably available to the Petitioner at the time of the NOID as the Foreign Exchange Statement document was signed 10 months after the Chief's NOID was issued and the business agreements and bank statements were the Petitioner's own personal documents readily available to her. We will therefore review the record 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").

[6] *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).

In this case, the Petitioner has not demonstrated, by a preponderance of the evidence, the path and lawful source of the $500,000 the Petitioner wired to the NCE. The documentation of the path of the Petitioner's investment funds prior to being remitted to the NCE consists solely of the Petitioner's [redacted] Bank account statement.[7] The bank statement shows the account had $370,000 in total deposits from May 3 to May 5, 2016 and $500,150 in total withdrawals from May 17 to May 18, 2016. However, the Petitioner did not provide a translation of the transaction details for the multiple deposits and did not otherwise provide an explanation for any of the deposit transactions that would reveal the source of the deposits. 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. Here, the Petitioner has not traced the path of her investment funds to a lawful source.

The Petitioner has also not submitted sufficient evidence showing her investment fund derived from lawful sources. The Petitioner claims the source of her $500,000 investment fund derived from the sale of her equity interest in a business she founded. The Petitioner claims she used her retained earnings to purchase an equity interest in [redacted] but provided no bank statements to show the lawful accumulation of these retained earnings. Additionally, the Petitioner did not provide any financial documentation showing the receipt of the equity sale proceeds or the transfer of the proceeds to the Petitioner's [redacted] Bank account. Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *Id.* In this case, the Petitioner has not submitted sufficient evidence to show her equity sale proceeds were deposited into her [redacted] Bank account and the bank account statement, alone, is not sufficient to demonstrate the Petitioner's investment fund derived from lawful sources.

On appeal, the Petitioner argues USCIS made a mistake of law because it applied an incorrect, heightened standard of proof when requesting additional evidence of the path and lawful source of her EB-5 investment funds. The Petitioner claims she submitted "extensive evidence" showing her investment funds were from the sale of her equity share in a business. We disagree. The record at the time the Chief issued the NOID consisted of the incomplete translation of the Petitioner's [redacted] Bank statement and business transaction documents that were not corroborated by financial documentation. These records did not constitute extensive evidence of the lawful source or path of the Petitioner's investment funds. Additionally, the Petitioner did not submit any evidence of a currency exchange having been conducted when the record shows the Petitioner's earned income and equity sale proceeds were in RMB funds. A petitioner must show 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

[7] The Petitioner also provided an additional letter from [redacted] Bank as well as an incomplete translation of his [redacted] Securities account. However, these documents only provide account balance information for the Petitioner's accounts in 2018 which is not relevant in determining the lawful source or path of the Petitioner's investment funds that were remitted to the NCE in 2016.

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 comprehensiveness and credibility of the submitted business plan. *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 her 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.