U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 06407431

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 he remitted to the NCE.[1] 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 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 he invested $500,000[4] in the NCE, which is associated with a USCIS-designated regional center. 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 Alcen, Inc., the job creating entity (JCE). The JCE plans to use the EB-5 capital and other funds to construct, develop, and operate a wind turbine farm located in 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 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 he 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 apparent discrepancies regarding the employment and salary history of the Petitioner's mother, 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 indicated that there were no discrepancies with his mother's employment or salary history; presented additional evidence, including the NCE's April 2017 business plan; and maintained that he 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 resolve the

[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).

discrepancies in the record or document his mother's retained earnings and therefore did not demonstrate his 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 he has shown his 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 his EB-5 capital derived from a $600,000 gift provided by his mother, [redacted] which consists of his mother's 5,347,240.22 renminbi (RMB) in total retained earnings from working as a senior manager in administration for [redacted] Hospital from January 2003 to June 2016. In his initial filing, the Petitioner provided his own personal [redacted]'s Bank [redacted] Branch statement showing a beginning balance of $249,853 as of September 2, 2016, along with additional deposits of $250,288. The record indicates the Petitioner remitted his $500,048 investment fund to the NCE on October 3, 2016.

The Petitioner did not document the complete path or lawful source of the gift funds [redacted] provided to the Petitioner as his EB-5 investment. The record does not contain any of [redacted]'s bank statements that would indicate she transferred the gift funds to the Petitioner. The Petitioner's [redacted]'s Bank statement also does not document the receipt of the gift funds as the bank statements are not fully translated and give no indication as to the source of the deposits listed in the bank statement. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claim that the bank deposits were from [redacted]'s retained earnings. Additionally, the Petitioner has not demonstrated that the US dollars deposited in his account originated with [redacted]'s income. Other documents show that [redacted] was compensated in renminbi, and the record lacks evidence that she converted the funds to US dollars and transferred them to the Petitioner. 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 failed to do so.

The record also contains inconsistencies as to [redacted]'s employment and salary history. When the record includes inconsistent evidence, "it is incumbent upon the [P]etitioner to resolve the inconsistencies by independent objective evidence" and that "[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *See Ho*, 19 I&N Dec. at 582. According to [redacted]'s employment and income certificate dated August 1, 2016, she received 5,347,240.22 RMB in total compensation while working as a senior manager in administration for [redacted] Hospital from January 2003 to June 2016. However, U.S. government records indicate [redacted] filed a U.S. non-immigrant visa application, under penalty of perjury, on October 16, 2014, whereby she claimed she was presently retired and last worked for [redacted] Hospital as an office worker on May 10, 2013.

In his attempt to resolve this inconsistency, the Petitioner offered [redacted]'s declaration whereby she claimed to have officially retired from her position at [redacted] Hospital on May 10, 2013, because of an age limitation and therefore truthfully listed her current occupation as "retired" in her visa

application. [redacted] claimed she was rehired by [redacted] Hospital at the same benefit level and salary as a contractor but "not in the official payroll" and claimed in her U.S. visa application that she had been an office worker due to her post-retirement re-employment. However, [redacted]s claims that she was re-hired as an office worker contractor not in the official payroll is inconsistent with the updated employment certificate from [redacted] Hospital which states [redacted] was "re-employed as office staff with the same rank and salary level by the previous department after she retired on May 10, 2013." These inconsistent documents do not resolve the above discrepancies as they are not competent objective evidence that would point to where the truth lies. *See id.* The Petitioner also provided [redacted]s personal tax records, however these records are not sufficient to resolve the above discrepancies as they do not contain her employment information such as name of employer or job description which would indicate [redacted] was lawfully employed. Additionally, the tax records do not support [redacted]'s assertion that she was not in the official payroll at [redacted] Hospital. We have reviewed all the documents in the record and conclude they do not reconcile the inconsistencies in the record.

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 his EB-5 investment funds. The Petitioner claims he submitted "extensive evidence" showing his investment funds were a gift from [redacted] and the "funds were eventually converted into U.S. currency" before being invested in the NCE. We disagree. The record at the time the Chief issued the NOID consisted of the Petitioner's personal bank statements and [redacted]s letter of employment that was inconsistent with her U.S. visa application. 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. 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

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 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.