U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32276535

Date: MAR. 19, 2024

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 classification makes immigrant visas available to noncitizens who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees. Noncitizens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish that the Petitioner has made a qualifying investment within a designated regional center in the United States. The Chief also concluded that the capital, which the Petitioner has invested or which the Petitioner is actively in the process of investing, is capital obtained through lawful means. We dismissed a subsequent appeal, concluding that the Petitioner has not established the claimed lawful source of funds invested in the new commercial enterprise. The Petitioner subsequently filed a suit against USCIS in federal court, and this case was voluntarily dismissed after USCIS agreed to issue a service motion to reopen. Accordingly, we reopened this case on a service motion to reopen, and the Petitioner was provided with another opportunity to provide additional evidence to establish his eligibility for immigrant investor visa classification.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will sustain the appeal.

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6(e). A petitioner must demonstrate by a preponderance of the evidence that the capital was his or her own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. 206, 210 (Assoc. Comm'r 1998). To show that the capital was his or her own, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). A petitioner cannot establish the lawful source of funds

merely by submitting bank letters or statements documenting the deposit of funds in the new commercial enterprise. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. The record must trace the path of the funds back to a lawful source. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

The Petitioner asserted that on December 4, 2018, he invested $500,000[1] into [redacted] the new commercial enterprise (NCE), which is associated with [redacted] pursuant to the Immigrant Investor Program. According to the Confidential Private Placement Memorandum (PPM) of the NCE, the NCE proposed to pool up to $49,500,000 from 99 immigrant investors and lend the entire amount to [redacted] (the Borrower). The PPM further indicates that the Borrower will distribute the loan proceeds to [redacted] which in turn will contribute the loan proceeds to [redacted] the job-creating entity (JCE). The PPM also indicates that the JCE will use the loan proceeds to develop [redacted] a mixed-use residential, retail, and office high rise development in [redacted] Washington.

The Petitioner asserted that he derived his investment funds of $500,000 through (1) the sale of stocks he was awarded from his employer, [redacted] and (2) the sale of a house in [redacted] Washington. The Petitioner further asserted that he purchased the house in April 2014 for $285,000 partly using a gift of $20,000 from his father, [redacted]

In a request for evidence (RFE), the Chief noted that the Petitioner has not established the lawful source of the $20,000 gift from his father and requested for evidence to overcome the deficiencies noted in the RFE. In response to the RFE, the Petitioner did not provide the requested evidence or other sufficient evidence to establish the claimed lawful source of the gift funds. The Chief determined that the Petitioner has not demonstrate by a preponderance of the evidence that the gift proceeds derived from lawful means.

In response to a notice of service motion, the Petitioner now submits his father's Indian income tax returns, his father's bank statements, his bank statement, employment certificate for his father, his father's expired employment identity card, certificate of pension benefits for his father, and last pay certificate for his father. These documents sufficiently establish the claimed lawful source of the gift funds, which were used by the Petitioner to purchase the property in [redacted] Washington.

The Petitioner has demonstrated by a preponderance of the evidence that the capital, which has been invested by the Petitioner or which the Petitioner is actively in the process of investing, is capital obtained through lawful means. Therefore, the Petitioner has established eligibility for the immigrant investor visa classification.

ORDER: The appeal is sustained.

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[1] On March 15, 2022, President Joe Biden signed the EB-5 Reform and Integrity Act of 2022, which made significant amendments to the EB-5 program, including the designation of a targeted employment area (TEA) and the minimum investment amounts. *See* section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner filed his petition in 2018 and indicated that the project is located in a TEA. Therefore, the requisite amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2015).