U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 06365413

Date: MAR. 26, 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, which is affiliated with [redacted] (the Regional Center), a United States Citizenship and Immigration Services (USCIS) designated regional center.[1] On appeal, the Petitioner submits additional evidence and 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).

[1] 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).

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

II. ANALYSIS

The Petitioner indicates he invested $500,000 in the NCE.[3] According to the April 2016 business plan, the NCE seeks to raise up to $17,500,000 EB-5 funds from 35 foreign national investors to loan to [redacted] the JCE. The JCE plans to use the EB-5 capital and other funds for the development of a premium hotel resort on the outskirts of [redacted] Florida. As we will explain below, we find that the Petitioner has not established, by a preponderance of the evidence[4] his eligibility for the classification. Specifically, he has not documented the lawful source of his funds.

In this case, the Petitioner alleges that his EB-5 capital derived from a 2,216,800 renminbi (RMB) gift from his mother, [redacted], as well as 1,630,000 RMB mortgage loan proceeds secured by real property jointly owned by [redacted] and the Petitioner. The record indicates [redacted] obtained the gift funds from the proceeds of a 440,000 RMB "Life insurance mortgage loan", a 1,260,000 RMB mortgage loan secured by the real property she jointly owned with the Petitioner, and 530,000 RMB in company dividends from [redacted] Documents submitted by the Petitioner indicate [redacted] deposited the proceeds in her [redacted] Bank account ending in 1260 and [redacted] Bank account ending in 5961. [redacted] then arranged for eleven individuals to exchange the RMB funds into USD and transfer the funds to the Petitioner both directly and through two other intermediaries.

The record, however, does not sufficiently document the source of funds used to purchase the real property jointly owned by the Petitioner and [redacted] or whether [redacted] had authorization to use the mortgage loan proceeds for the Petitioner's EB-5 investment. The record indicates the property in question was purchased by [redacted] using a 233,888 RMB housing loan on October 30, 2004. However, the Petitioner did not document how [redacted] was able to obtain the housing loan or whether she had the lawful source of funds to pay the mortgage or down payment on the property. Additionally, the record indicates [redacted] obtained a mortgage loan secured by the property for

[2] 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).

[3] The Petitioner indicates that the NCE is located in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(t)(2).

[4] If a petitioner submits relevant probative, and credible evidence that leads USCIS to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *see also 6 USCIS Policy Manual* G.2(E), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

2,890,000 RMB on October 19, 2016. However, the mortgage loan documents in the record indicate [redacted] listed the purpose of the mortgage loan was for the purchase of goods to assist a business and that she was associated with [redacted] These documents do not indicate [redacted] was authorized to use the proceeds for anything other than the purchase of goods or to assist a business. 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). Here, the Petitioner has not made such a showing.

The Petitioner has also not sufficiently documented [redacted]'s authorization to invest the 440,000 RMB of personal loan proceeds[5] in the NCE. The Personal Loan Application dated June 15, 2016, indicates [redacted] obtained the loan to pay for educational expenses. The record indicates [redacted] instead sent these proceeds to the Petitioner as part of his EB-5 investment. The Petitioner has not sufficiently shown [redacted] was authorized to use these funds for investment in the NCE and therefore has not shown these funds derived from a lawful source as required. *See* 8 C.F.R. § 204.6(e).

Next, the record includes inconsistent evidence regarding the source of the dividends. First, the record at the time of filing included a Gift Agreement document which stated [redacted] received 530,000 RMB in company dividends from [redacted] in November 2016, however the Petitioner also provided a Dividend Statement and company bank statements showing the company paid 170,000 RMB of dividends to [redacted] in June 2016. The Chief issued a request for evidence (RFE) asking for, among other things, the Petitioner to clarify the source of the dividends used as part of his investment funds. However, the Petitioner did not offer any statements or clarifying evidence regarding the source of the dividends in his response to the RFE. On appeal, the Petitioner reiterates the dividends were paid from [redacted], in November 2016, but provided a new Certificate of Dividend claiming [redacted], actually paid the 530,000 RMB dividends to [redacted] The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner has not provided any statements or objective documentary evidence in the record that would resolve this inconsistency.

Finally, we have concerns regarding the currency exchange and related transactions. The record indicates that, due to the currency exchange restrictions in place in China, [redacted] sought the assistance of thirteen individuals to exchange the RMB into USD and transfer the exchanged funds to the Petitioner. Four of these individuals remitted the exchanged funds directly to the Petitioner while two individuals, [redacted] and [redacted][6] received remittances from seven other individuals before forwarding them on to the Petitioner. However, the record contains multiple inconsistencies regarding the purpose and use of the funds used in the currency exchange. The statements from all of the individuals involved claim they had an arrangement to provide the exchanged funds to the Petitioner. While the Petitioner and [redacted] maintain these funds were to be used for his EB-5 investment fund, the transaction receipts in the record indicate the funds were meant for other purposes. For example, all of the remittance receipts for funds sent to the Petitioner or [redacted] indicate the funds were for "overseas study and educational related trips (over a year)" while the receipts for funds sent

[5] While the Petitioner refers to these proceeds throughout the record as being life insurance or mortgage proceeds, the documentation in the record indicates the proceeds are from an unsecured personal loan.

[6] The Petitioner and numerous documents in the record refer to [redacted] as the Petitioner's classmate and friend and [redacted] as the Petitioner's American friend.

to [redacted] indicate they were to be used for "medical examination and health related trips (over a year)." The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* The Petitioner has not provided any statements or objective documentary evidence in the record that would resolve these inconsistencies which are material to determining if the funds used in the currency exchange and invested in the NCE derived from lawful sources.

Additionally, these inconsistencies make us question the reliability and sufficiency of the evidence regarding the lawful transfer of funds using [redacted] as the intermediary. The Petitioner provided a statement from [redacted] that stated [redacted] and [redacted] had an arrangement where he would receive USD in his Bank of America account in the US and then mail the funds to the Petitioner. The record indicates [redacted] mailed a check from Florida for $199,912 to the Petitioner's address in Texas but does not clarify the details of [redacted]s arrangement with [redacted], why the remittances he received indicated the transfers were for medical examinations or trips, or how those funds represent lawful capital for the Petitioner's use. 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). Here, the Petitioner has not submitted sufficient documentation to demonstrate the currency exchange and related transactions were lawful.

Based on the reasons stated above, we conclude that 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. Specifically, he has not demonstrated, by a preponderance of the evidence, the lawful source of the funds used to purchase real property, that [redacted] may lawfully use the mortgage loan and personal loan proceeds to invest in the NCE, or that the currency exchange and related transactions were lawful.

III. CONCLUSION

The Petitioner has not documented the lawful source of the capital he remitted to 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.