U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17322666

Date: MAY 9, 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) (2017). 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 of 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), section 610, as amended.

The Chief of the Immigrant Investor Program Office initially approved the petition but subsequently revoked the approval of the petition, concluding that there have been numerous material changes to the facts relevant to the analysis of the Petitioner's eligibility. The Chief also determined that the record did not establish that the required amount of capital has been made available to the business most closely responsible for job creation and that the new commercial enterprise will create at least 10 full-time positions for qualifying employees or the Petitioner has demonstrated indirect job creation through reasonable methodologies. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 withdraw the Chief's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of Homeland Security may, at any time, for what the Secretary deems to be good and sufficient cause, revoke the approval of any petition approved by the Secretary under section 204. *See also* 8 C.F.R. § 205.2(a) (stating that USCIS may revoke the approval of a petition upon notice to the petitioner on any ground other than those specified in §205.1 when the necessity for the revocation comes to the attention of USCIS).

There is "good and sufficient cause" within the meaning of section 205 of the Act to revoke approval of a visa petition if the evidence of record at the time of the decision, including any explanation or rebuttal submitted by the petitioner, warrants a denial based on the petitioner's failure to meet their burden of proof. *Matter of Estime*, 19 I&N Dec. 450, 452 (BIA 1987). In addition, the realization that the initial approval of the petition was in error may, in and of itself, be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). A revocation can only be grounded upon, and the petitioner is only obliged to respond to, the allegations in the notice of intent to revoke. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988).

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 their 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 their own, the 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 NCE. *Matter of Ho*, 22 I&N Dec. at 210-211; *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.

II. ANALYSIS

The Petitioner indicated on page 2 of her petition and supporting evidence that on March 26, 2015, she invested $500,000[1] in [redacted], the new commercial enterprise (NCE), which is sponsored by the [redacted] (Regional Center)[2] pursuant to the Immigrant Investor Pilot Program.

According to the Private Placement Memorandum (PPM) of the NCE, the NCE proposes to pool $98,000,000 from 196 immigrant investors and invest the entire amount to assist in real estate development and other business activities at the [redacted] located in [redacted] Vermont, which is owned by [redacted] (Resort Owner). The PPM further indicates that the Resort Owner intends to (1) construct and operate a lodge and conference center with approximately 112 luxury guest suites, conference space, and leisure and commercial services, (2) construct and operate an indoor and outdoor tennis complex, (3) construct and operate an indoor aquatic center, (4) expand and operate mountain biking facilities, and (5) do all other acts, which may be necessary to the project.

[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 s*ection 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner filed her petition in 2015 and indicated that the project is located within 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).

[2] On June 26, 1997, the legacy Immigration and Naturalization Service approved the Regional Center's application for designation as a regional center to participate in the Immigrant Investor Pilot Program. On July 3, 2018, the Chief terminated the Regional Center's designation, finding that it no longer served the purpose of promoting economic growth. *See* 8 C.F.R. § 204.6(m)(6)(i), (ii). On September 25, 2019, we dismissed a subsequent appeal, but on March 25, 2021, we granted the Regional Center's motions to reconsider and reopen, withdrew the Chief's decision, and remanded the matter for further action and consideration.

In [redacted] 2016, the Securities and Exchange Commission (SEC) filed a civil enforcement action in federal court, alleging that [redacted] and private entities associated with a group of projects known as the [redacted][3] Subsequently, the State of Vermont filed a separate lawsuit in state court against [redacted][4] The SEC action led to a U.S. district court judge appointing a receiver, [redacted] to administer and manage the affairs of the private entities involved in the fraudulent scheme.

In light of these legal proceedings, the Chief issued a notice of intent to revoke (NOIR) the approval of the petition, explaining that there have been numerous material changes to the facts relevant to the analysis of the Petitioner's eligibility. The Chief also determined that the Petitioner did not demonstrate that the full amount of her capital was made available to the business mostly closely responsible for job creation and that the NCE would likely satisfy the job creation requirements. Subsequently, the Chief revoked the approval of the petition based on the issues raised in the NOIR.

On appeal, the Petitioner contends that the basis for the revocation was incorrect and that USCIS did not apply the facts as supported by the evidence to the law and such application was a substantial abuse of discretion requiring reversal of such decision.

Upon de novo review, we find the record does not appear to establish eligibility on an issue not raised in the NOIR. As such, we conclude a remand is appropriate and, therefore, need not address the other grounds raised on appeal.

The Petitioner asserted that she derived her investment funds through a gift of $525,000 from her spouse's uncle, [redacted] to her spouse. The Petitioner further asserted that her spouse's uncle obtained the gift funds from the 1994 sale of a condominium and its contents located in [redacted] California. The condominium and its contents were owned by a trust. Mr. [redacted] was the sole trustee of the trust, and Mr. [redacted] and his four siblings were the beneficiaries of the trust.

In October 1994, Mr. [redacted] as the trustee of the trust sold the condominium for $535,000. After deduction of taxes, HOA assessments, and settlement charges, on November 3, 1994, the sale proceeds of $431,441.54 were deposited into Mr. [redacted] trust account. In 2018, Mr. [redacted] four siblings who are the other beneficiaries of the trust agreed to gift $525,000 from the sale proceeds of the condominium to the Petitioner's spouse.

Because the record reflects that Mr. [redacted] received only $431,441.54 as the sale proceeds of the condominium, the source of the Petitioner's remaining investment funds ($68,558.46) is unclear.

---

[3] *See SEC v.* [redacted] 2016) (Compl. ¶¶ 1, 3).

[4] *See Vermont v.* [redacted] 2016) (citing the Plaintiff's Amended Complaint); *see also Vermont v.* [redacted] 2018) (providing that the matter was resolved with a settlement for [redacted] and that proceeds of the settlement will go to the State of Vermont, not to the investors allegedly defrauded by the defendants).

Furthermore, bank statements in the record show that the condominium sale proceeds were comingled with funds from other sources, the lawfulness of which the record does not appear to establish.

The claims that the invested funds were not only derived from lawful means but that they were also accumulated and maintained without being comingled with funds not shown to derive from lawful means have not been shown by a preponderance of the evidence. To show that the capital was their own, the petitioner must document the path of the funds. *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. Here, the record does not appear to establish that the funds the Petitioner invested in the NCE derived from a lawful source.

In light of our discussion above, we decline to address the Chief's additional grounds to revoke the approval of the petition and will reserve these issues for future consideration should the need arise.[5]

III. CONCLUSION

Given the additional eligibility issues addressed in this decision, we conclude a remand is appropriate. Upon remand, the Chief should fully consider the evidence on record and the additional eligibility issues addressed in this decision. If a new NOIR is to be issued, the Chief should allow the Petitioner an opportunity to submit additional briefing and rebuttal evidence in support of the petition. *See* 8 C.F.R. § 205.2(b).

ORDER: The Chief's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[5] *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 alternate issues on appeal where an applicant is otherwise ineligible).