U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15960642

Date: MAY 15, 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 denied the petition, concluding that the record did not establish 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. The matter is now before us on appeal pursuant to 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 dismiss the appeal.

I. LAW

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, 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.

II. ANALYSIS

The Petitioner indicated on pages 4 and 6 of his petition that on December 12, 2017, he invested $500,000[1] in [redacted] the new commercial enterprise (NCE), which is sponsored by [redacted] pursuant to the Immigrant Investor Pilot Program. According to the Confidential Private Placement Memorandum (PPM), the NCE proposes to pool $31,000,000 from 62 immigrant investors and lend the entire amount to [redacted] which in turn will make a preferred equity investment in [redacted] the job-creating entity (JCE), for the development and construction of a mixed-use residential complex in [redacted] California.

The Petitioner asserted that he derived his investment funds through a loan of 4,050,000 Chinese renminbi (RMB) obtained by his spouse, [redacted] from [redacted] in 2017 and secured by a real property located in [redacted] China. The Petitioner further asserted that he exchanged his investment funds from RMB to U.S. dollars through his two friends, [redacted]

The record shows that on April 6, 2017, the loan proceeds of RMB 4,050,000 were deposited into the Petitioner's [redacted] (CCB) account. On August 14, 2017, the Petitioner transferred RMB 665,000 from his CCB account to [redacted] (CMB) account. In exchange, from August 18, 2017 to December 7, 2017, [redacted] transferred a total of $100,050 from her [redacted] (SCB Singapore) account to the Petitioner's [redacted] (SCB Hong Kong) account.

The record also shows that on September 7 and 15, 2017, the Petitioner transferred RMB 2,612,720 and RMB 328,524 from his CCB account to [redacted] CMB account. In exchange, from September 8 to 18, 2016, [redacted] transferred a total of $450,200 from his CMB Hong Kong account to the Petitioner's SCB Hong Kong account.

The Chief found that no evidence was provided to show the actual path of funds leaving [redacted] CMB account and transferring $100,050 to Ms. [redacted] SCB Singapore account. The Chief also found that no evidence was provided to show the path of funds belonging to [redacted] from China to Hong Kong. The Chief determined that the Petitioner has not established by a preponderance of the evidence that his investment funds were lawfully obtained.

On appeal, the Petitioner contends that the Chief applied erroneous and unfounded conclusions of law and fact to reach the decision, that the Petitioner previously provided evidence that exceeds the preponderance of the evidence standard, and the Chief's decision does not comply with the applicable laws and regulations.

The Petitioner claims that he previously provided evidence that exceeds the preponderance of the evidence standard. However, upon de novo review, we conclude the record did not establish by a

[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).

preponderance of the evidence that the Petitioner's investment funds were lawfully obtained for the reasons we will discuss below.

A petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

As the Chief stated, because the Petitioner's funds were routed through third-party exchangers, [redacted] and there is insufficient documentation to demonstrate the legitimacy of the exchangers[2] and the funds in the exchangers' bank accounts in Singapore and Hong Kong, the Petitioner bears the burden of demonstrating that the funds transferred to the Petitioner's SCB Hong Kong account were obtained through lawful means. Here, the Petitioner has not met this burden.

In a request for evidence and again in a notice of intent to deny, the Chief requested for additional evidence to demonstrate the sources of funds used by the third-party exchangers, [redacted] for the currency exchanges. The Petitioner asserted that the $100,050 in [redacted] bank account in Singapore were from her accumulated employment income from a company in [redacted] China, since November 2015. To support this claim, the Petitioner submitted an employment and income certificate, a business license, and tax payment certificates for Ms. [redacted] The employment and income certificate verifies Ms. [redacted] employment with the company from November 2015 to March 2020 and her income from November 2015 to March 2017. Ms. [redacted] tax payment certificates provide individual income taxes paid for Ms. [redacted] to the [redacted] Municipal Tax Service from 2012 to 2016. The business license of the company indicates that the company is located in [redacted] China. The submitted documents do not establish that Ms. [redacted] employment income earned in China were deposited into and maintained in her bank account in Singapore as claimed.

The Petitioner claimed that most of Ms. [redacted] income was deposited into her CMB account and that for wealth management savings, Ms. [redacted] used to convert her RMB income to U.S. dollars and then deposit the U.S. dollars into her SCB Singapore account. To support this claim, the Petitioner provided copies of three exchange memos from CMB, which show that Ms. [redacted] exchanged RMB 333,214 to $49,514 in August 2015, exchanged RMB 95,550 to $14,900 in October 2016, and exchanged RMB 345,285 to $50,000 in January 2017. These three exchange memos do not provide the source of RMBs, which were used to exchange to U.S. dollars. In addition, these exchange memos alone do not establish that the U.S. dollars were deposited into and maintained in Ms. [redacted] bank account in Singapore. When requested for additional evidence, the Petitioner claimed that Ms. [redacted] declined to provide additional documents.

Regarding the source of funds used by [redacted] for the currency exchange, the Petitioner asserted that the $450,200 in Mr. [redacted] bank account in Hong Kong were from his accumulated employment

[2] The Petitioner did not claim that the third-party exchangers, [redacted] are licensed or registered money services businesses, but they are his friends who helped him with the currency exchanges.

income from a company in [redacted] China, since May 2004. To support this claim, the Petitioner provided an employment and income certificate. While this employment and income certificate verifies Mr. [redacted] employment with the company from 2004 to 2018 and his annual income from the company, it does not establish that Mr. [redacted] employment income earned in China were deposited into and maintained in his bank account in Hong Kong as claimed.

The Petitioner claimed that the company that employed [redacted] is part of the [redacted] China's [redacted] company by revenue, and [redacted] is registered with the NASDAQ as [redacted] in 2014. He submitted a copy of Form F-1 (Registered Statement under the Security Act of 1933) of [redacted] which was filed with the U.S. Securities and Exchange Commission in 2014. This Form F-1 of a corporation, which appears to be different from the claimed former employer of Mr. [redacted], [redacted] does not support that the Mr. [redacted] employment income from the company were deposited into and maintained in his bank account in Hong Kong. When requested for additional evidence, the Petitioner asserted that Mr. [redacted] has left [redacted] and he is unable to obtain additional documents from Mr. [redacted]

Based on the evidence in the record, it appears that the Petitioner's funds sent to Mr. [redacted] CMB account and to Ms. [redacted] CMB account have never left mainland China. While the Petitioner claimed that Mr. [redacted] and Ms. [redacted] obtained the exchange funds through their accumulated employment income from companies in [redacted] China, and provided their employment and income certificates from the companies and other documents, the submitted documents do not establish their employment income was deposited into and maintained in their bank accounts in Hong Kong or Singapore to establish the claimed lawful sources of the exchange funds by a preponderance of the evidence for the reasons stated above. The sources of funds in Mr. [redacted] CMB Hong Kong account and in Ms. [redacted] SCB Singapore account have not been sufficiently demonstrated.

On appeal, the Petitioner does not offer new evidence to document the claimed lawful sources of funds in Ms. [redacted] bank account in Singapore and in Mr. [redacted] bank account in Hong Kong. The Petitioner contends that he did his best to provide evidence requested by USCIS and that any evidence not submitted to USCIS was because it was not within his control to provide such evidence. While we acknowledge the Petitioner's difficulties in obtaining the requested evidence from third-party exchangers, in visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966).

Moreover, while the Petitioner claims that the Chief applied erroneous and unfounded conclusions of law and fact to reach the decision and that the Chief's decision does not comply with the applicable laws and regulations, the Petitioner does not identify any facts erroneously found or misstated by the Chief. Nor does he specially cite laws or regulations to support that the Chief's decision does not comply with the applicable laws and regulations. Contrary to the Petitioner's claims, the Chief's request for evidence of the claimed lawful sources of the exchange funds used by the third-party exchangers for the currency exchanges is supported by the pertinent regulations and precedent decision. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210.

In the present case, the record reflects that the Petitioner's funds sent to Mr. [redacted] bank account in China and to Ms. [redacted] bank account in China have never left mainland China. There are breaks in the paths of the Petitioner's investment funds. The plain language of 8 C.F.R. §§ 204.6(e) and 204.6(j)(3) supports the Chief's requirement that petitioners identify the source of funds, which is demonstrated through documentation evidencing the complete path of the funds. *See Truong v. USCIS*, No. 21-316, 2023 WL 4232658, at 5 (D.D.C. June 28, 2023). The relevant path includes tracing the funds from their point of origin though *any intermediary accounts*. *See id.* at *6.* (emphasis added).

Because the record did not establish the complete paths of the Petitioner's funds from mainland China to Hong Kong or Singapore and then to the United States, the Petitioner must demonstrate by a preponderance of the evidence that the funds occurring after the breaks in the paths derived from lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. While the Petitioner claimed that Ms. [redacted] and Mr. [redacted] obtained the exchange funds through their accumulated employment income and provided their employment and income certificates from their former employers in China and other documents, the submitted documents do not sufficiently demonstrate that the funds in Mr. [redacted] CMB Hong Kong account and in Ms. [redacted] SCB Singapore derived from their accumulated employment income to establish the claimed lawful sources of the exchange funds as explained above. Therefore, the record remains insufficient to establish by a preponderance of the evidence the claimed lawful sources of the funds invested by the Petitioner in the NCE.

III. CONCLUSION

Because the record did not establish by a preponderance of the evidence that the funds invested by the Petitioner in the NCE were lawfully obtained, we conclude the Petitioner is ineligible for the immigrant investor visa classification.

ORDER: The appeal is dismissed.