U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 06434142

Date: MAY 18, 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 November 2017 economic analysis report, the NCE seeks to raise up to $3,000,000 EB-5 funds from six foreign national investors to invest in an equity interest in [redacted] the JCE. The JCE plans to use the EB-5 capital and other funds for the development, construction, and operations of a mixed-use development consisting of residential apartments, retail space, and freeway billboard.

### A. Lawful Source and Path of Funds

In this case, the Petitioner alleges his EB-5 capital derived from 15,600,000,000 Vietnam Dong (VND) in proceeds from his wife's sale of her equity interest in a company located in Vietnam. The sale proceeds were deposited in his wife's [redacted] bank account on May 16, 2016. According to the joint declaration signed by the Petitioner and his wife dated September 19, 2016, the Petitioner's wife sought the assistance of [redacted] with exchanging the VND into USD because Ms. [redacted]'s business in Hong Kong, [redacted], had a bank account in Singapore with enough USD funds available for a currency swap. The initial record at the time of filing indicates on July 26, 2016, Ms. [redacted] remitted $550,000 from the [redacted]'s [redacted] Bank account ending in 5301 to the NCE on behalf of the Petitioner. In return, the Petitioner's wife remitted 12,503,135,299 VND from her [redacted] bank account to Ms. [redacted]'s NCB account in Vietnam on July 29, 2016.

The Chief issued a request for evidence (RFE) specifically noting that "[b]ecause [the] Petitioner's funds were routed through… third party exchangers, and there is insufficient documentation to demonstrate the legitimacy of the exchanger and the funds… in Vietnam…, [the] Petitioner bears the burden of demonstrating that the funds transferred by [Ms. [redacted] to [the NCE] on behalf of [the] Petitioner were obtained through lawful means." The Chief specifically requested, among other things, evidence clarifying the apparent discrepancy in the record regarding a business registration document claiming [redacted] was incorporated in Hong Kong instead of Singapore as well as "sufficient documentary evidence to support claims of the lawful source(s) and claims of the

[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(f)(2).

path(s) of how funds arrived in [redacted]'s Singapore (or applicable location[s]) bank account(s)."

In her RFE response, the Petitioner provided evidence showing [redacted] was actually incorporated in Belize, contracts from 2016 indicating [redacted] had $1,333,020 in accounts receivable due to be paid to its [redacted] account in Singapore, as well as documentation showing Ms. [redacted] owned and earned income from another pharmaceutical trading company incorporated in Belize. The Petitioner also provided updated statements from himself and Ms. [redacted] which claimed Ms. [redacted] was not willing to provide any more documentation due to her concerns with her personal privacy.

After reviewing the record in its entirety, the Chief observed that "the record is silent as to why [the] Petitioner presented in the RFE response the materially inconsistent and conflicting claim that the funds [Ms. [redacted] provided [the] Petitioner were lawfully sourced from [redacted] in Belize, when [the] Petitioner claimed at original filing that the funds [Ms. [redacted] provided [the] Petitioner were from [her company] in Hong Kong." The Chief also noted that the record contains "insufficient documentation to support [the] Petitioner's claim that business income earned from lawful business activities was deposited into [redacted]'s [redacted] bank account... in Singapore prior to [Ms [redacted]] providing [the Petitioner's investment fund] to the NCE." The Chief denied the petition, concluding the Petitioner had not reconciled an inconsistency in the record or provided sufficient evidence documenting the lawful source of funds remitted from the [redacted] bank account and therefore the Petitioner did not establish the lawful source or path of his EB-5 investment. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) ("[i]t is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence").

On appeal, the Petitioner submits additional evidence concerning the lawful source of his funds that he did not present to the Chief. The Petitioner offers, among other documents, an updated statement from Ms. [redacted] a July 2016 bank statement for the [redacted] account, as well as documentation of additional businesses owned by Ms. [redacted]

The Petitioner, however, had already been put on notice of the required evidence, was given a reasonable opportunity to provide the evidence, and the evidence was reasonably available to the affected party at the time it was supposed to have been submitted.[4] The Petitioner claimed that Ms. [redacted] was not willing to provide any more documentation due to her concerns with her privacy. Ms. [redacted]'s updated statement indicates she no longer lives in Vietnam and "was not able to invest the time and money to fly to Vietnam and Singapore to obtain records and information requested prior to [the Petitioner's] RFE response date." Ms. [redacted] also offers an explanation regarding why the Petitioner initially offered evidence claiming [redacted] was registered in Hong Kong when it was actually registered in Belize, but claims this information was not available to the Petitioner prior to the RFE response date because "I have many companies and did not remember these details." However, the Petitioner was given 98 days to respond to the RFE and, during that time, Ms. [redacted] offered a statement indicating she was not going to provide any further documentation due to her

[4] *See Oyeniran v. Holder*, 672 F.3d 800, 808–09 (9th Cir. 2012) ("It is not sufficient that the evidence physically existed in the world at large; rather, the evidence must have been reasonably available to the petitioner."). *See also INS v. Doherty*, 502 U.S. 314, 324 (1992) (the Attorney General did not abuse his discretion by denying motion to reopen to apply for asylum and withholding based on lack of new material evidence).

concerns with her personal privacy. These documents were specifically requested by the Chief and Ms. [redacted]'s claims that she forgot the details of a business registration or did not have the time to travel to obtain the requested documents during the 98 day response period do not indicate the documents were not reasonably available at the time of the RFE. We will therefore review the record without considering the evidence submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose").

As discussed above, the Petitioner indicated the $550,000 deposited into the NCE derived from a currency swap of funds provided by Ms. [redacted] and the [redacted] While the Petitioner claims that [redacted] facilitated the currency swap using its bank account in Singapore, the record at the time of decision does not sufficiently document the path or the source of the funds remitted from this account to the NCE. First, the record contains inconsistent information regarding where [redacted] was registered to do business. 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 Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). At the time of filing, the Petitioner claimed [redacted] was a Singapore company but submitted a share certificate indicating [redacted] was incorporated in Hong Kong and the company authorized the share certificate be issued on January 5, 2011. In his attempt to reconcile this inconsistency, the Petitioner provided documents showing [redacted] was actually registered in Belize along with a statement from Ms. [redacted] claiming the company had been registered in Belize for tax purposes. However, these documents do not reconcile or explain why the Petitioner initially portrayed the [redacted] as a valid, registered company located in Hong Kong or Singapore when the company was actually incorporated in Belize. This unresolved inconsistency is material to the Petitioner's claim that his investment fund derived from [redacted]'s lawful business activities and accumulation of funds. A petitioner must show that his or her invested capital did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e).

Additionally, the record at the time of decision does not contain sufficient documentation to show the path or lawful source of the funds in [redacted]'s [redacted] bank account in Singapore. The initial record only consisted of an outward remittance form showing [redacted] remitted $550,000 from its [redacted] bank account to the NCE on behalf of the Petitioner. However, 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). In response to the RFE, the Petitioner provided contracts showing [redacted]. was due to be paid over $1,000,000 in 2016. While these contracts indicate [redacted] would, at some time, have enough lawfully sourced funds to remit to the NCE, the record at the time of decision did not include any [redacted] bank statements showing the proceeds of these contracts were retained in the bank account prior to being invested in the NCE. Evidence of earnings, without additional corroboration demonstrating the earnings were retained in an account, is insufficient to establish that [redacted] accumulated adequate funds to remit to the NCE on behalf of 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.

On appeal, the Petitioner argues requesting evidence of the path and source of funds from a third party is a mistake of law because it violates the Administrative Procedures Act (APA), similar cases have been approved in the past, and applies an incorrect, heightened standard of proof. These arguments are not persuasive as the Petitioner did not provide sufficient documentary evidence showing the path of funds deposited in [redacted]'s bank account in Singapore or the lawful source of the USD remitted from [redacted] to the NCE. While the Petitioner documented the source of his equity sale proceeds, the documentation of the path of these funds stopped when they were deposited in Ms. [redacted]'s NCB account in Vietnam on July 29, 2016. When USCIS requested the Petitioner provide additional evidence due to this break in the path of funds, the Petitioner provided evidence that [redacted] had over $1,000,000 in accounts receivable due to be paid to its bank account in Singapore, but did not sufficiently document the path of the funds into the [redacted] account prior to being remitted to the NCE on behalf of the Petitioner. Without additional corroborating evidence confirming the path or source(s) of these funds, the Petitioner has not established that the funds he received were derived by lawful means. *See* 8 C.F.R. § 204.6(j)(3). Notwithstanding the Petitioner's statements claiming it is unreasonable to request third party financial documentation, it remains his burden to demonstrate her eligibility for the EB-5 classification, which includes establishing the lawful source of his investment with documents that trace the path of the funds back to a lawful source. *See Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. Here, for the reasons discussed, the Petitioner has not made such a showing.

## III. CONCLUSION

Based on the reasons stated above, we conclude that the Petitioner has not resolved a material inconsistency in the record or presented sufficient evidence tracing the path of the funds invested in the NCE on his behalf to a lawful source. *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. He has therefore not established by a preponderance of the evidence the lawful source of the funds he claims to have invested in 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.