U.S. Citizenship and Immigration Services

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

In Re: 06369876

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 August 2016 business plan, the NCE seeks to raise up to $72,000,000 EB-5 funds from 144 foreign national investors to loan to [redacted] the JCE. The JCE plans to use the EB-5 capital and other funds for the development and construction of a [redacted] destination resort and water park in [redacted] Georgia. For the reasons discussed below, we find the Petitioner has not demonstrated, by a preponderance of the evidence, that his invested capital did not derive, directly or indirectly, from unlawful means.

In this case, the Petitioner alleges that his EB-5 capital derived from a 3,400,000 renminbi (RMB) gift from his mother-in-law. The record indicates the Petitioner's mother-in-law obtained the gift funds from the proceeds of a mortgage loan secured by her real property. The gift funds were deposited in the Petitioner's [redacted] Bank account on September 9, 2016. According to the Capital Exchange Agreement dated September 9, 2016, the Petitioner would transfer the gift funds to Mr. [redacted]s "Chinese mainland bank account" and, in return, Mr. [redacted] would remit $500,955 to the Petitioner. The initial record at the time of filing indicates the Petitioner transferred 3,400,000 RMB to Mr. [redacted]'s Bank [redacted] account on September 11, 2016, and Mr. [redacted] then remitted $500,955 from his Bank [redacted] account to the Petitioner's Bank [redacted] account on September 13, 2016. The Petitioner then remitted his investment fund to the NCE on September 21, 2016.

The Chief issued a request for evidence (RFE) specifically noting that "[b]ecause [the] Petitioner's funds were routed through a third party exchanger, and there is insufficient documentation to demonstrate the legitimacy of the exchanger and the funds in [Mr. [redacted]'s Bank [redacted] account, [the] Petitioner bears the burden of demonstrating that the funds transferred to the NCE were obtained through lawful means." In his RFE response, the Petitioner offered, among other documents, statements from Mr. [redacted] and his wife, Ms. [redacted], whereby they claimed the funds in Mr. [redacted]s Bank [redacted] account derived from three sources: $72,000 Mr. [redacted] had purchased from [redacted] Bank, $249,950 from Mr. [redacted]s separate currency swap arrangement with [redacted], and $129,000 in Mr. [redacted]'s retained earnings from his employment with

[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).

[redacted] Mr. [redacted] stated his earnings from [redacted] were retained in an unidentified "US account" and he was unable to obtain any documentation from the bank due to the passage of time. Mr. [redacted] and his wife also stated they were unable to obtain documentation of the transfers from [redacted] to Ms. [redacted] bank account because the company refused to provide the records and Ms. [redacted] was unable to obtain the corresponding transfer records from [redacted] because of the passage of time.

After reviewing the record in its entirety, the Chief observed that Mr. [redacted] had provided employment certifications for two other employers but not [redacted] The Chief also noted that the Petitioner had not provided documentation on the source of the USD funds remitted by [redacted], and did not document the identities of the company's designated payees, [redacted] and [redacted] or their roles in the currency exchange. The Chief denied the petition, concluding the record lacked sufficient evidence of sources of the above transactions and therefore the Petitioner did not establish the lawful source or path of his EB-5 investment.

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 a letter from [redacted] business records and statement from [redacted] and screenshots from Ms. [redacted]'s [redacted] account that received the funds from [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 originally claimed that [redacted] would not provide any documentation and [redacted] was unable to provide any bank records due to the passage of time. However, the Petitioner now offers these documents without explaining why they were not available at the time of the RFE but are now available for submission on appeal. These documents were specifically requested by the Chief and the Petitioner did not indicate that the evidence submitted on appeal was 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 $500,000 deposited into the NCE derived from a currency swap of funds provided by Mr. [redacted] However, the record at the time of decision does not sufficiently document the path or the source of the USD funds in Mr. [redacted]'s Bank [redacted] account that were then remitted to the Petitioner's Bank [redacted] account as part of the currency swap. First, the Petitioner did not sufficiently document Mr. [redacted]'s employment with [redacted] or his $129,000 in retained earnings that Mr. [redacted] claimed were used to partially fund the currency swap. The record at the time of decision includes Mr. [redacted]'s resume as well as his statement claiming he was employed at [redacted] from August 2006 to December 2011 where he earned $160,000 in total income. However, the record did not include any tax records, income statements, or letters from employers that would corroborate his employment with [redacted] To show the lawful source

[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).

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 sufficiently documented Mr[redacted]s employment with[redacted] Additionally, the Petitioner did not identify the bank account where Mr.[redacted] allegedly retained $129,000 of his earnings from [redacted] or provide other documentation indicating Mr.[redacted] had retained these earnings. Evidence of earnings, without additional corroboration demonstrating the earnings were retained in an account, is insufficient to establish that Mr.[redacted] accumulated adequate funds to remit to the Petitioner as part of the agreed currency swap. 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.

Second, the record at the time of decision did not include sufficient documentation confirming the lawful source of the funds Mr.[redacted] used to purchase $72,000 from[redacted] Bank account that was later forwarded to the Petitioner in 2016 as part of their currency swap. The record at the time of decision includes a statement from Mr.[redacted] claiming he purchased $72,000 from[redacted] Bank from March 2014 to August 2015 and remitted the USD to his Bank[redacted] account. The Petitioner provided fund transfer receipts and statements from Mr.[redacted]s[redacted] Bank and Bank[redacted] accounts showing $72,000 was deposited in Mr.[redacted]'s[redacted] account. While these documents show Mr.[redacted] transferred USD to his Bank[redacted] account, they do not provide any information on the source of funds Mr.[redacted] used to purchase the USD from[redacted] Bank. 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). Here, the Petitioner has not sufficiently documented the lawful source of the $72,000 purchased from[redacted] Bank that was later used, in part, to fund the Petitioner's EB-5 investment.

Finally, the Petitioner has not sufficiently documented the lawful source or path of the $249,950[redacted] remitted to Mr.[redacted] as part of their own separate currency swap and later provided to the Petitioner as part of his investment fund. According to Mr.[redacted]s statement, he entered into a currency swap arrangement with[redacted] where he would remit RMB funds to employees of[redacted] and the company would then transfer USD funds to Ms.[redacted]'s[redacted] account in Hong Kong. The record indicates Mr.[redacted] remitted 2,261,250 RMB to the bank accounts belonging to three staff members of[redacted]., on April 21, 2015. Ms.[redacted] then received $350,000 in her[redacted] account in Hong Kong and then forwarded $249,950 of these funds to Mr.[redacted]'s Bank[redacted] account. However, the Petitioner did not submit documentation explaining the lawful source of the RMB funds Mr.[redacted] remitted from his[redacted] Bank account to the employees of[redacted] or the source of the USD funds[redacted] remitted to Ms.[redacted]s[redacted] account. As noted above, bank statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *Id.* Here, the Petitioner has not demonstrated the lawful source of funds used in the currency swap between Mr.[redacted] and[redacted]

The Petitioner has also not sufficiently documented the path of all funds in the currency swap between Mr.[redacted] and[redacted] The Petitioner provided bank records showing he remitted RMB funds to[redacted] employees and Ms.[redacted] received USD funds in her[redacted] account. However, the Petitioner did not provide the bank or transaction records

from [redacted] or its employees that would corroborate the employees received the RMB funds from Mr. [redacted] or the company then remitted USD to Ms. [redacted] 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. Here, the Petitioner has not sufficiently traced the path of the currency swap funds back to a lawful source as he has not documented [redacted]'s receipt of RMB funds from Mr. [redacted] or the company's transfer of USD funds to Ms. [redacted]

On appeal, the Petitioner argues there is "no basis in current EB-5 regulations for this stipulation or requirement" that the Petitioner must show the lawful source of a third party's U.S. currency in a currency swap arrangement. The Petitioner's argument is not convincing, as at the time of filing his I-526, he was required to show his invested capital did not derive, directly or indirectly, from unlawful sources and that he must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(e) and 8 C.F.R. § 204.6(j)(3).

The Petitioner also argues USCIS's request for third party documentation is a mistake of law because it applies an incorrect, heightened standard of proof. This argument is also not persuasive as the Petitioner did not provide sufficient documentary evidence showing the path of funds from Mr. [redacted]'s Bank [redacted] account to his Bank [redacted] account. While the Petitioner documented the source of his gift funds, the documentation of the path of these funds stopped when they were deposited in Mr. [redacted]s Bank [redacted] account on September 11, 2016. When USCIS requested the Petitioner provide additional evidence due to this break in the path of funds, the Petitioner provided evidence that Mr [redacted] engaged in a separate currency swap as well as using some of his own funds to provide the Petitioner with USD funds but did not sufficiently document the path or source of any of these funds. Without additional corroborating evidence confirming the source(s) of these funds, he has not established that the funds he received were derived by lawful means. *See* 8 C.F.R. § 204.6(i)(3). Notwithstanding the Petitioner's statements claiming it is unreasonable to request third party financial documentation, it remains his burden to demonstrate his 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 presented sufficient evidence tracing the path of the funds he received from Mr [redacted] 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.