U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 05586664

Date: MAY 28, 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, finding that the Petitioner did not demonstrate the lawful source of the funds she remitted to [redacted] a NCE that plans to lend funds to an entity aiming to construct and operate a hotel in [redacted] California. *See* 8 C.F.R. § 204.6(e) (2011) (defining "capital"), (j)(3). The Petitioner appeals, maintaining that she has established eligibility for the EB-5 classification.

In these proceedings, it is the Petitioner's burden to establish, by a preponderance of the evidence, eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).[1] 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, as it is the case here.

In addition, to establish eligibility for the EB-5 classification, 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) (defining "capital"). To show the lawful source of the funds, an investor must submit evidence such

[1] If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, it has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

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 show 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

In this case, the Petitioner claims to have invested at least $500,000[3] in the NCE. In her appellate brief, she states that she relied on two businesses, which she calls "third-party exchange companies," to assist her in exchanging Vietnamese Dong (VND) to U.S. dollars (USD), and then remitting the funds to the NCE. The record includes bank statements showing that on September 29, 2016, the Petitioner remitted $550,000 to the NCE. While the Petitioner has demonstrated that she received VND for selling her property in Vietnam in 2015, the record is insufficient to confirm the lawful source of the USD she transferred to the NCE.

Initially, the Petitioner claims that her EB-5 funds derived from the sale of a property in [redacted] Vietnam, that she jointly owned with her spouse. On page 4 of her appellate brief, the Petitioner asserts that she received "VND 49,500,000,000 and VND 4,400,000,000 property sale proceeds" from the buyer. According to her bank statements for an account ending in 0896, she received VND 49,500,000,000 on October 12, 2015, and VND 4,400,000,000 on January 6, 2016, then, more than nine months later, on September 26, 2016, she remitted VND 12,398,760,000 to [redacted] of [redacted] for currency exchange and transfer.[4] The evidence, including the bank statements, however, does not establish that the sale proceeds she received had remained in her account until her September 2016 remittance to [redacted] Specifically, her account balance on September 22, 2016, was VND 232,208,437, which does not support a finding that the sale proceeds had remained in the account or financed her remittance to [redacted] The bank statements show that during September 2016, the Petitioner's account received multiple "credit amount[s]" in large sums, which financed her transfer to [redacted] She, however, has not documented the lawful source of those amounts.

Moreover, the record includes additional deficiencies in the Petitioner's attempt to document the complete path of the funds she remitted to the NCE. *See Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. She asserts that she relied on [redacted] and [redacted] of [redacted] Company[5] to convert her VND into USD and to bring the funds out of Vietnam to the United States. She offers a

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[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 claims that the requisite amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2011).

[4] While on appeal, the Petitioner claims that [redacted] Company converted her VND to USD, the record lacks evidence supporting this assertion. Significantly, the Petitioner's initial filing made no reference of [redacted] Company's involvement in the transaction. Rather, she claimed, through her counsel's letter, that [redacted] who, according to a September 2016 "Power of Attorney," worked as an accountant for [redacted] and [redacted] of [redacted] Company facilitated the currency exchange and transfer.

[5] Some documents in the record refers to [redacted] Company" as "[redacted]"

bank statement for an account ending in 0896, showing that on September 26, 2016, she remitted VND 12,398,760,000 to [redacted]. According to [redacted]'s August 2018 statement, he transferred the VND he received from the Petitioner "in cash to [redacted] Company and had [redacted] Company transfer amount of USD equivalent to USD550,000 from Vietnam to the U.S." for the Petitioner to invest in the NCE. The Petitioner presents a receipt from [redacted] of [redacted] Company, claiming that she received VND 12,398,760,000 from [redacted] "on behalf of [the Petitioner]."

The record, however, includes inconsistent evidence regarding how much money the Petitioner remitted for currency exchange purposes. For example, a September 2016 receipt notes that [redacted] received from the Petitioner VND 12,276,000,000, not VND 12,398,760,000, as [redacted] and the Petitioner claim. The receipt also does not mention that [redacted] had accepted the funds on [redacted]'s behalf. The Petitioner has not resolved this inconsistency. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (providing that "it is incumbent upon the petitioner 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").

Regardless, while the record contains documents concerning funds the Petitioner remitted to the NCE, it does not establish, by a preponderance of the evidence, the complete path of the funds or their lawful sources. *See Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. According to the Petitioner, her VND in cash went through individuals and companies and ultimately to [redacted], who accepted the money on [redacted] Company's behalf. Although the Petitioner has presented documentation indicating that the company[6] was engaged in several business types, including "wholesale trade," "tour operator activities," and "travel agency activities," she has not shown that it could legally engage in currency exchange and transmission. The evidence does not list currency exchange or services as one of its business types.

On appeal, the Petitioner submits a January 2019 letter from an attorney in Vietnam, claiming that under Vietnamese law, "[e]xport and import businesses will be allowed to open foreign currency accounts, buy foreign currencies such as USD to transfer money from Vietnam to abroad at Vietnamese banks." Neither this letter nor other documentation in the record demonstrates that [redacted] Company could act as a currency exchanger and transmitter by taking VND from an individual in Vietnam, then transferring to her USD in the United States. The Petitioner has also not provided copies of the ordinances and decrees referenced in the attorney's letter. Furthermore, the attorney's letter cites to an ordinance that permits businesses to purchase foreign currency specifically to "make payments for imports of goods and services" but makes no reference to the ability of such a company to act as a currency exchanger or transmitter. When relying on foreign law to establish eligibility, the application of the foreign law is a question of fact, which must be proved by the Petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973)). Here, the record does not establish that [redacted] Company could lawfully exchange the Petitioner's funds, transmit the funds by taking VND from her in Vietnam, and then transferring USD to her in the United States.

[6] According to documents entitled "Business Registration Report within the Past 3 Years" and "Current Information of Enterprise," [redacted] Company dissolved in [redacted] 2017.

Similarly, while on appeal the Petitioner presents a letter from [redacted] of the [redacted] Bank, claiming that overseas transactions "would be blocked if both the laws/procedures for outgoing financial transfers of both the bank and the government of Vietnam were not complied," he does not include any information specifically relating to the legitimacy of [redacted] Company's role as a currency exchanger and transmitter. He also does not profess to having any personal knowledge of the dealings between the Petitioner and the individuals and companies who acted as her third-party currency exchangers and transmitters. The letter, therefore, is insufficient to demonstrate the complete path of the funds the Petitioner remitted to the NCE.

Additionally, the Petitioner has not shown that [redacted] Company had lawfully acquired the $550,000 it purportedly remitted to the Petitioner. While the record contains some business documents, including business registration, it does not include information on the size of the company's operation or confirm that it had lawfully accumulated sufficient USD to send to the Petitioner in September 2016.

Furthermore, as the Chief pointed out in her decision, the bank record shows that [redacted] Company remitted $550,000 from an account ending in 0138 to the Petitioner's account, but the record does not demonstrate that [redacted] Company owned the account at the time of the transaction. Its business documents, while list other accounts, do not list one ending in 0138. [redacted]s claim in her December 2018 letter that the company owned the account that remitted funds to the Petitioner is not corroborated by the record, and thus, is insufficient to demonstrate the lawful source of the USD from the account which the Petitioner later received. In short, the Petitioner has not shown that the funds she invested in the NCE derived from the sale of her property, as alleged. The Petitioner must establish the lawful source of the entire amount she claims to have invested in the NCE with documents that trace the complete 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, she has not made such a showing.

III. CONCLUSION

Based on the reasons we have stated above, we conclude that the Petitioner has not shown, by a preponderance of the evidence, the lawful source of the funds she remitted to the NCE. The Petitioner has therefore not established eligibility for the EB-5 classification.

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; *Skirball Cultural Ctr.*, 25 I&N Dec. at 806. Here, that burden has not been met.

ORDER: The appeal is dismissed.