U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20591121

Date: NOV. 5, 2024

Appeal of 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) (2019).[1] This fifth preference (EB-5) classification makes immigrant visas available to noncitizens 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 Acting Chief of the 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. 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

A noncitizen may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. A noncitizen may invest the required funds directly in an NCE or through a regional center, as the Petitioner has done in this case. 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) (2019).

A noncitizen must demonstrate that they have placed their own capital at risk in the NCE. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Matter of Soffici*, 22 I&N Dec. 158, 165 n.3 (Assoc. Comm'r 1998) (stating that "[a] petitioner must . . . establish, pursuant to 8 C.F.R. § 204.6(e),

[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act, which made significant amendments to the EB-5 program, including the designation of targeted employment areas and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed her petition in March 2017, the relevant law then in existence governs this appellate adjudication.

that funds invested are [their] own"). In addition, the noncitizen must show that their 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. at 210-11; *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] *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 that on February 24, 2017, she invested $500,000[3] 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 up to $93,000,000 from 186 immigrant investors and lend the entire amount to [redacted] for the development and construction of a luxury branded hotel in [redacted] Pennsylvania.

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

The record shows that on January 12, 2017, the loan proceeds of RMB 4,00,000 were deposited into the Petitioner's [redacted] account. On February 7, 2017, the Petitioner transferred RMB 3,999,948 from her [redacted] account to [redacted] account. In exchange, from February 10 to 15, 2017, [redacted] transferred a total of $580,000 from her [redacted] account in Hong Kong to the Petitioner's [redacted] bank account. The record also shows that on February 21 and 23, 2017, the Petitioner transferred the funds received in her [redacted] bank account to the NCE.

The Acting Chief found that no evidence was provided to show the actual path of funds leaving [redacted] account to her [redacted] account, or the actual path of funds leaving Ms. [redacted] account transferring $580,000 to the Petitioner's [redacted] account. The Acting Chief determined that the Petitioner has not established by a preponderance of the evidence that her investment funds were lawfully obtained.

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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] 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 her petition in 2017 and indicated on the petition 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).

On appeal, the Petitioner contends that the Acting 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 Acting Chief's decision does not comply with the applicable laws and regulations.

The Petitioner claims that she 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 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 Acting Chief stated, the Petitioner's funds were routed through a third-party exchanger, [redacted] There is insufficient documentation to demonstrate the legitimacy of the exchanger[4] and the funds in the exchanger's bank account in Hong Kong. The Petitioner bears the burden of demonstrating that the funds transferred to her [redacted] 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 Acting Chief requested additional evidence to demonstrate the source of funds used by the third-party exchanger, [redacted] for the currency exchange. The Petitioner asserted that the $580,000 in [redacted] account were from her accumulated employment income as a financial planner with an investment consulting company in [redacted] China, since February 2010.

To support this claim, in response to the RFE the Petitioner submitted a statement from [redacted] a certificate of employment from [redacted] employer, and a list of transactions from [redacted] account from January 1, 2016 to March 1, 2017.

The employment certificate verifies Ms. [redacted] employment with the company from February 2010 but does not list her income. The list of transactions with Ms. [redacted] account does not reflect any activity or balance information until February 6, 2017. The list of transactions reflects the following activity:

- A deposit of $1,000 was made on February 6, 2017, creating a balance of $1,000.
- Two expenditures totaling $520 were made on February 6, 2017, leaving a balance of $480.

[4] The Petitioner did not claim that the third-party exchanger, [redacted] is a licensed or registered money services business, but instead she is a friend who helped her with the currency exchange.

- A deposit of $100,000 was made on February 7, 2017, creating a balance of $100,480.
- A deposit of $249,998 was made on February 8, 2017, creating a balance of $350,478.
- A deposit of $232,000 was made on February 9, 2017, creating a balance of $582,478. No further deposits are listed.
- From February 10 to February 15, 2017, eight expenditures were made totaling $580,080.
- The remaining balance after the final transaction listed on February 15, 2017, is $2,398.

The submitted documents do not establish that Ms. [redacted] employment income earned in China were deposited into and maintained in her bank account in Hong Kong as claimed.

In response to the NOID, the Petitioner submitted her personal statement describing the currency exchange with [redacted] In her statement, the Petitioner asserted that [redacted] told that her that her income from working in the field of investment and financial management from February 2010 to December 2016 was approximately 4,500,000 RMB. The Petitioner asserted that when she requested additional documentation of her income from [redacted] Ms. [redacted] advised that her employer "did not agree to issue specific income certificate as required." The Petitioner further asserted that Ms. [redacted] was unable to provide additional evidence of her income or deposits to her [redacted] account due to privacy concerns, as "too many other bank accounts were involved for her fund accumulation and transfers."

The Petitioner claimed that Ms. [redacted] accumulated income was deposited into her [redacted] account and used to convert the Petitioner's RMB investment funds into U.S. dollars. To support this claim, the Petitioner submitted the transaction history for Ms. [redacted] account listing transactions in February 2017. The list of transactions does not provide the source of any deposit which was used to exchange to U.S. dollars. In addition, the beginning balance of $1,000 on February 6, 2017, and ending balance of $2,398 on February 15, 2017 does not demonstrate an accumulation of income in Ms [redacted] account.

While the Petitioner claimed that Ms. [redacted] obtained the exchange funds through her accumulated employment income from her employer in [redacted] China, the submitted documents do not establish that her employment income was deposited into and maintained in her bank account in Hong Kong, or any other account, 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 [redacted] 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 Hong Kong. The Petitioner contends that she did her best to provide evidence requested by USCIS and that any evidence not submitted to USCIS was because it was not within her control to provide such evidence. While we acknowledge the Petitioner's difficulties in obtaining the requested evidence from the third-party exchanger, 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 Acting Chief applied erroneous and unfounded conclusions of law and fact to reach the decision and that the Acting 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 Acting Chief. Nor does she specially cite laws or regulations to support that the Acting Chief's decision does not comply with the applicable laws and regulations. Contrary to the Petitioner's claims, the Acting Chief's request for evidence of the claimed lawful sources of the exchange funds used by the third-party exchanger for the currency exchange 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 Ms. [redacted] 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 Acting 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 and then to Canada and 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] earned the exchange funds through her accumulated employment income and provided her employment and income certificates from her former employer in China and other documents, the submitted documents do not sufficiently demonstrate that the funds in Ms. [redacted] account derived from her 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

It is the Petitioner's burden to demonstrate her eligibility for the EB-5 classification, which includes establishing the lawful source of her purported EB-5 investment. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. 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.