U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-Q-

DATE: NOV. 13, 2018

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: 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 record did not establish the Petitioner invested or was actively in the process of investing at least $500,000 of capital in , the NCE.[1] On appeal, the Petitioner submits additional evidence and asserts that the record establishes his eligibility for the benefit sought.

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,[2] as the Petitioner has done in this case. Regional centers apply for designation as such with the United States Citizenship and Immigration Services (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), as it is the case here. 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).

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[1] The Petitioner indicates that the NCE is located in a targeted employment area, and 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); *see also* 8 C.F.R. § 204.6(e) (defining "rural area").

[2] 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).

The regulation at 8 C.F.R. § 204.6(e) provides the following definitions for "capital" and "invest":

> *Capital* means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. All capital shall be valued at fair market value in United States dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b)(5) of the Act.
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> *Invest* means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

In addition, the regulation specifies that the petitioner must demonstrate that he or she "has invested, or is actively in the process of investing," and "has placed the required amount of capital at risk [in a NCE] for the purpose of generating a return on the capital placed at risk." *See* 8 C.F.R. § 204.6(j), (j)(2).

II. ANALYSIS

The record is insufficient to demonstrate that the Petitioner has invested at least $500,000 of capital in the NCE, as required under the Act and regulation. *See* section 203(b)(5) of the Act; 8 C.F.R. § 204.6(f)(2), (j)(2). This case involves an investment in the NCE, which is associated with a USCIS-designated regional center. According to the business plan, the NCE intends to pool up to $38,500,000 from 77 foreign nationals to invest in the JCE, which will develop, operate, and manage up to six oil wells in Texas. Specifically, the NCE will invest in

In July 2014, the Petitioner's mother, remitted $500,000 to the NCE, intending to become one of its foreign national investors. In September 2014, she rescinded her investment. She then executed a gift agreement, stating that she "has freely and without any reservation granted her one unit interest in [the NCE], an equivalent of [$]500,000, as a gift to [the Petitioner]."[3] In November 2014, the Petitioner executed the NCE's subscription agreement, and the NCE remitted $500,000 to the JCE on the Petitioner's behalf. Subsequently in December 2014, the Petitioner filed the instant petition, seeking EB-5 classification based on his investment in the NCE.

[3] explains that she rescinded her investment and gifted her interest in the NCE to the Petitioner because he turned 21 in 2015 and could not be a derivative beneficiary based on her petition.

The Petitioner has not established that he has placed the required amount of capital at risk in the NCE, as specified under 8 C.F.R. § 204.6(j) and (j)(2). The regulation requires evidence that he, not someone else, invested the funds in the NCE. The record, however, shows that it was [redacted] not the Petitioner, who remitted $500,000 to the NCE as an investment.

Regardless, even assuming *arguendo* that the Petitioner's investment of a credit, which [redacted] had received from the NCE, satisfies 8 C.F.R. § 204.6(j) and (j)(2), he has not shown that his investment meets the definition for capital under 8 C.F.R. § 204.6(e). The record contains inconsistent information relating to the form of his investment. According to [redacted] November 2017 statement, when she rescinded her investment, she received "a $500,000 credit" from the NCE. A September 2014 notice of rescission also states that she received a "Credit Subscription Amount." In her September 2014 gift agreement, however, she specified that she gifted to the Petitioner "one unit interest in [the NCE]," not a credit of $500,000. [redacted] gift agreement therefore contradicts the notice of rescission and her later statement.[4] *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (concluding that a petitioner must "resolve the inconsistencies by independent objective evidence").

On appeal, the Petitioner argues that his investment in the NCE qualifies as capital under the regulation even though "he became the owner of the invested funds subsequent to its infusion into the NCE and prior to the infusion into the JCE . . . ." According to [redacted] gift agreement, however, the Petitioner was never the owner of the $500,000 that she had invested in the NCE. Rather, the gift agreement specifies that he became the owner of one unit of interest in the NCE.

A unit of interest in a company is not "cash, equipment, inventory, other tangible property [or] indebtedness . . . ." 8 C.F.R. § 204.6(e). On page 4 of his appellate brief, the Petitioner categorizes his contribution in the NCE as an investment of "cash equivalents." He, however, has not presented sufficient documents in support of this position. Examples of cash equivalents include treasury bills, money market funds, and short-term government bonds, which all have high credit quality and are highly liquid.[5] The Petitioner has not demonstrated that one unit of interest in the NCE shares the same characteristics. Specifically, he has not shown that one unit of interest in the NCE has high credit quality or is highly liquid, meaning it can be easily converted into cash in the open market.[6]

Moreover, even assuming that the Petitioner could establish that one unit of interest in the NCE qualifies as cash equivalents he had not shown that it has a fair market value of at least $500,000. *See* 8 C.F.R. § 204.6(e) (defining "capital"). The record, however, does not include sufficient documentation, such as an appraisal from a credible and independent appraiser, confirming that the

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[4] Page 14 of the memorandum that the Petitioner initially filed, similarly states: [redacted] unit was transferred to [the Petitioner]."

[5] *Cash Equivalents*, https://www.investopedia.com/terms/c/cashequivalents.asp, accessed on September 26, 2018, a copy of the printout has been incorporated into the record of proceedings.

[6] *Liquid Asset*, https://www.investopedia.com/terms/l/liquidasset.asp, accessed on September 26, 2018, a copy of the printout has been incorporated into the record of proceedings.

NCE's one unit of interest was valued at least $500,000 in 2014, when he received it from [redacted] and executed the subscription agreement. Without additional corroboration, the Petitioner has not shown that he invested or was actively in the process of investing in the NCE, or that his investment qualified as cash equivalents and its fair market value was at least $500,000. *See* 8 C.F.R. § 204.6(j), (j)(2); *see also* 8 C.F.R. § 204.6(e).

III. CONCLUSION

The Petitioner has not established his investment of at least $500,000 of capital in the NCE. Accordingly, he has not demonstrated eligibility for the immigrant investor classification.

ORDER: The appeal is dismissed.

Cite as *Matter of E-Q-*, ID# 1519989 (AAO Nov. 13, 2018)