U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20399320

Date: NOV. 19, 2024

Appeal of Immigrant Investor Program Office Decision

Form I-526, Immigrant Petition 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 noncitizens who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.[1]

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the Petitioner did not establish: 1) the funds invested into [redacted] the new commercial enterprise (NCE) was from lawful source; and 2) the NCE will create at least 10 full-time positions for qualifying employees. The matter is now before us on appeal pursuant to 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.

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 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). 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

[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 his petition on October 14, 2016, the relevant law in existence on that date governs this appellate adjudication.

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).

The Petitioner claimed eligibility for the investor visa based on her investment of $500,000 into the NCE on September 15, 2016. The NCE proposed to pool $35 million from immigrant investors and lend the entire amount to [redacted], the job creating entity (JCE), which intends to create a year-round vacation resort in [redacted], New Hampshire. The Petitioner claimed that the investment funds originated from her agreement on August 2, 2011, with [redacted] obligating the Petitioner to develop a medical device to measure blood sugar levels for a payment of $13,500,000. The Petitioner also provided "Assignment of Agreement" dated February 2, 2014, assigning "all of its rights and obligations" of the 2011 agreement to two companies: [redacted]. The Petitioner submitted bank statements to demonstrate the transfer of EUR 2,023,718 (USD 2,262,078) from her [redacted] account ending in 4096 to her [redacted] account ending in 6420 on September 7, 2016, and another transfer of $545,000 from the same [redacted] account ending 6420 to NCE's [redacted] account ending in 4898 on September 15, 2016.

In the notice of intent to deny (NOID), the Chief pointed out various inconsistencies in the Petitioner's claims and documentation regarding the lawful source and paths of funds. The Chief requested evidence that the Petitioner completed her contractual obligation from the 2011 agreement and has the necessary qualifications to develop the medical device described in the contract. The Chief also requested information about the companies involved in the 2011 agreement as they did not appear to engage in business activities. The Chief further questioned the misspelling of [redacted] as [redacted] in the 2014 assignment agreement and requested explanation as to why the Petitioner was paid over three million dollars by [redacted] prior to signing the assignment agreement on February 2, 2014.[2] In addition, the Chief noted that, according to publicly available sources, the company representatives who signed the 2011 agreement have been linked to money laundering schemes out of the former Soviet Union and tied to companies that were allegedly involved in illegal activities.

Upon de novo review, we find the record does not establish the lawfulness of the Petitioner's funds. Instead of addressing the discrepancies in the NOID, the Petitioner simply asserted that "the documents provided with the original submission were sufficient to establish the source and path of funds" and that "there is nothing more [the Petitioner] can provide other than what was provid[ed] before . . ." Although the Petitioner submitted the certificates of criminal record for herself and her husband as well as her academic diplomas in medicine and human resources management, her NOID response failed to resolve various deficiencies raised by the Chief and did not establish that her investment was obtained through lawful means.

With the appeal, the Petitioner contends once again that "the information provided with the original submission properly addresses the issues raised and therefore rests on the evidence submitted." Despite the Petitioner's claim that she has "submitted evidence of financial records, wire transfers and currency exchange calculations to show that she legally acquired the capital which she invested in [the

[2] The Petitioner's [redacted] bank statements ending in 4096 show that she received money from [redacted] beginning January 2013 through September 2013 in various amounts, totaling over three million dollars.

NCE]," bank letters or statements by themselves are insufficient to demonstrate their lawful source and the record must trace the complete path of the funds back to a lawful source. *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (holding that demonstrating a "complete path" of funds is USCIS' authoritative position recognized by other relevant precedent decisions); *see also Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

Here, the Petitioner has not explained the discrepancies and questions material to establishing the lawful source of her funds. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Therefore, we conclude that the Petitioner has not her burden of demonstrating that her funds come from lawful sources.

The Chief further determined that the Petitioner has not established that the NCE will create at least 10 jobs for qualifying employees. However, in light of our discussion on the source of funds, we will reserve our opinion and decline to address the Petitioner's appellate arguments on the remaining eligibility issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the record does not sufficiently demonstrate that the funds invested by the Petitioner were obtained through lawful means, the Petitioner has not shown by a preponderance of the evidence that she is eligible for the immigrant investor visa classification.

ORDER: The appeal is dismissed.