U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27943142

Date: NOV. 20, 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 Chief of the Investor Program Office denied the petition, concluding that the record did not establish that the funds invested by the Petitioner have been 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), that funds invested are [their] own"). In addition, the noncitizen must show that their invested capital

[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 June 2018, the relevant law then in existence governs this appellate adjudication.

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 6 of her petition that she initially invested $200,379.95[3] in [redacted] the new commercial enterprise (NCE), on September 12, 2018. The NCE is sponsored by [redacted] pursuant to the Immigrant Investor Pilot Program. According to the EB-5 Financing Agreement, the NCE proposes to pool up to $33,000,000 from 66 immigrant investors and lend the entire amount to [redacted] the job creating entity, for the development and construction of a mixed-use community center.

The Petitioner asserted that her EB-5 capital derives from a loan from her father who is the sole shareholder of [redacted] a foreign import/export business in Benin he established in 2005. The initial filing included a loan agreement between the Petitioner and her father, as well as business registration and financial records for [redacted] The filing also included bank records documenting the transfer of funds to the Petitioner from her father. The Petitioner submitted a promissory note as evidence of her commitment to pay the $299,620.05 balance of her total EB-5 investment.

Upon review of the initial filing, the Chief issued a request for evidence (RFE). The Chief requested that the Petitioner submit evidence demonstrating her full $500,000 investment to the NCE. Additionally, the Chief requested evidence that the invested funds were obtained through lawful means. The Chief noted that the record did not include evidence that the Petitioner's father derived the funds to start his business through lawful means, or that the business authorized the loan to the Petitioner. She further noted that the record did not establish the source of the funds transferred from multiple accounts to the Petitioner from her father.

In response to the RFE, the Petitioner submitted evidence that she made additional investments between August 2018 and April 2019, totaling $299,620.05. Specifically, she provided letters from the NCE confirming receipt of her investment funds of $64,620.05 on August 15, 2018, and of $235,000 on April 14, 2019. The Petitioner also submitted a shareholder's resolution from [redacted]

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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] Enacted on March 15, 2022, the EB-5 Reform and Integrity Act of 2022 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 2018 and indicated that the NCE is located within 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).

[redacted] authorizing the distribution of funds for her EB-5 investment. In addition, the Petitioner provided statements from her father and bank records documenting that her $200,379.95 initial investment was derived through lawful means. The Petitioner's father provided a statement explaining that, in addition to [redacted], he is also "CEO of about twenty companies and establishments ... which allow us to carry out state contracts, purchases and sales." He submitted notarial deeds, some with English language translations and some without, identifying him as manager and administrator of multiple businesses.

The Chief concluded that the Petitioner had established that her initial investment of $200,379.95 derived from lawful means. However, in denying the petition, the Chief determined that the Petitioner did not establish that her remaining investment funds totaling $299,620.05 derived from lawful means. The Chief noted that, although the record demonstrated the lawful source of funds for two transfers of funds to the Petitioner from her father, the two amounts did not total the requisite $299,620.05. Specifically, the Chief determined that the Petitioner had sufficiently documented a transfer of $165,000 on August 7, 2018, and a transfer of $64,000 on August 16, 2018, totaling $229,000. However, the record demonstrates that these amounts were the basis for the Petitioner's initial investment of $200,379.95. The record did not include evidence of the source of funds for the required investment balance of $299,620.05. The Chief also noted that the record included untranslated documents concerning the redemption of funds in a term-deposit account, but that it did not establish that the funds were actually redeemed and deposited into the Petitioner's father's account.

On appeal, the Petitioner provides additional bank records and a statement from her father. The Petitioner's father states that the additional $299,620.05 "was sourced from term-deposits that are tied to [his] business interests." He states that the additional investment capital was comprised of two transfers: $60,000 on August 16, 2018, and $251,000 on April 4, 2019.

A. $60,000 Transfer of August 16, 2018

The Petitioner's father states that, in March and June 2017, he transferred 100,000,000 African Financial Community (CFA) francs from the business accounts of two other businesses he owns and controls into his personal account with [redacted] Benin ending 0301. He further states that in October 2017, from these business funds he wired 100,000,000 CFA from his [redacted] Benin account to [redacted] "so that he could deposit it into my [redacted] Togo account ending 0035 to facilitate the conversion and transfer transactions." He then states that he transferred 90,000,000 CFA of these funds from his [redacted] Togo account to a separate [redacted] Togo account[4] on December 4, 2017, and from that account he transferred 35,556,600 CFA (approximately $60,000) to the Petitioner on August 16, 2018.

The record includes copies of several [redacted] Benin checks dated in March and June 2017. The checks are payable to the Petitioner's father's personal [redacted] Benin account 0301 and reference the businesses [redacted] Bank statements from [redacted] Benin reflect that the corresponding checks were deposited into the Petitioner's [redacted] Benin account. The record

[4] The Petitioner's father provided bank statements for two personal accounts with [redacted] Togo – one account ending in 0035 and another ending in 0008.

also includes notarial deeds documenting that the Petitioner's father is the sole manager and administrator of [redacted]

The record includes an October 6, 2017 transfer order from [redacted] Benin, requesting payment of 100,000,000 CFA from the Petitioner's father's [redacted] Benin account 0301 to [redacted] Bank records show that this transaction was debited from the Petitioner's father's [redacted] Benin account on October 10, 2017.

Bank records further show that the Petitioner's father received a payment from [redacted] on August 28, 2017 of 100,000,000 CFA. This amount was credited to the Petitioner's father's personal [redacted] Togo account ending in 0008. Bank records also show that on December 4, 2017 the Petitioner's father withdrew 90,000,000 CFA by check drawn on the [redacted] Togo account 0008. The corresponding check for 90,000,000 CFA was then deposited in the Petitioner's father's [redacted] Togo account 0035 on December 4, 2017.

To show that the invested funds were obtained through lawful means, a petitioner must produce evidentiary documents listed at 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 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. 206, 210-11 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998).

Here, the record lacks sufficient evidence confirming that the funds the Petitioner's father received from the businesses [redacted] were from lawful sources. The record does not identify the type of business activity for these entities or include any financial records demonstrating how these businesses acquired the funds that were ultimately deposited in the Petitioner's father's [redacted] Benin account in March and June 2017.

Additionally, the record lacks sufficient evidence confirming that the funds the Petitioner's father transferred to and received from [redacted] were from lawful sources. The [redacted] Benin transfer order for 100,000,000 CFA to [redacted] is dated October 6, 2017. However, the purported corresponding deposit from [redacted] of 100,000,000 CFA into the Petitioner's father's [redacted] Togo account 0008 is dated more than one month earlier on August 28, 2017. This inconsistency casts doubt on the Petitioner's father's explanation of the source of funds for the $60,000 he transferred to the Petitioner on August 16, 2018, and that these funds did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e).

B. $251,000 Transfer of April 4, 2019

The Petitioner's father states that, from December 2015 to February 2016, he transferred 100,000,000 CFA from [redacted] and 200,000,000 CFA from the business accounts of two other businesses he owns and controls into a term deposit account with [redacted] Benin. He further states that in March 2019, he redeemed the term deposit of 300,000,000 CFA to his personal [redacted] Benin account 0301.

He then states that he transferred 150,599,416 CFA of these funds from his [redacted] Togo account 0008 (approximately $251,000) to the Petitioner on April 4, 2019.

The record includes copies of several [redacted] checks dated in December 2015 and February 2016. The checks are payable to [redacted] accounts ending in 2011 and 3011 and reference the businesses [redacted] Bank statements from [redacted] reflect that the corresponding checks were deposited into the business accounts for each entity. Additionally, [redacted] Benin bank statements for the account of [redacted] reflect a debit of 100,000,000 CFA on February 12, 2017.

The record includes a March 10, 2016 term deposit contract (number 100504) between [redacted] Benin and the Petitioner's father, establishing that an account named "term deposit" was opened with 300,000,000 CFA to be held until March 5, 2017 where "the account balance will not vary neither higher or lower." Bank records show that the term deposit contract 100504 was redeemed on March 6, 2017 with a deposit of 300,000,000 CFA into the Petitioner's father's [redacted] Benin account 0301. Bank records further show a debit of 300,000,000 CFA from this account on March 17, 2017, but neither the Petitioner's father nor the bank records identify an account to which these funds were transferred. Additional bank records reflect that a transfer of 150,599,416 CFA was made from the Petitioner's father's personal [redacted] Togo account 0008 to the Petitioner on April 3, 2019.

Here, the record lacks sufficient evidence confirming that the funds the Petitioner's father received from the businesses [redacted] were from lawful sources. The record does not include notarial deeds or other evidence that the Petitioner's father owns and controls or is otherwise associated with these businesses. The record does not identity the type of business activity for these entities or include any financial records demonstrating how these businesses acquired the funds that the Petitioner's father asserts were used to create the term deposit contract 100504 which ultimately is the source of the funds he transferred to the Petitioner for her EB-5 investment.

Additionally, the record lacks sufficient evidence confirming that the funds the Petitioner's father redeemed from the term deposit contract 100504 were transferred to any other account in his name. Although the Petitioner's father states that the funds were redeemed in March 2019, the [redacted] Benin bank statements reflect that the funds were redeemed and transferred two years earlier in March 2017. These inconsistencies cast doubt on the Petitioner's father's explanation of the source of funds for the $251,000 he transferred to the Petitioner on April 4, 2019, and that these funds did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e).

The Petitioner has not sufficiently established that the funds she claimed to have invested in the NCE did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e). The record, including evidence she offers on appeal, does not sufficiently document the complete path of her purported EB-5 investment, and trace it back to a lawful source. *See Borushevskyi v. USCIS*, 664 F.

Supp. at 129 (D.D.C. 2023). *See also Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

III. CONCLUSION

For the reasons we have discussed above, we conclude that the Petitioner has not established, by a preponderance of the evidence, her eligibility for the classification. Specifically, she has not demonstrated the lawful source of her purported EB-5 investment. *See* 8 C.F.R. § 204.6(j)(3), (e); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

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. Here, the Petitioner has not made such a showing.

ORDER: The appeal is dismissed.