U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 07891044

Date: NOV. 27, 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, concluding that the Petitioner did not establish eligibility for the EB-5 classification because he did not demonstrate he placed his capital at risk in [redacted] the NCE, which is affiliated with [redacted] (the Regional Center), a United States Citizenship and Immigration Services (USCIS) designated regional center.[1] Specifically, the Chief determined the Petitioner did not demonstrate he would risk suffering a loss on his investment consistent with an equity interest. We dismissed the subsequent appeal, finding the Petitioner did not establish eligibility under 8 C.F.R. § 204.6(j)(2) because his arrangement with the NCE did not meet the definition of "invest" set forth in 8 C.F.R. § 204.6(e) as well as an additional denial ground that the Petitioner did not sufficiently document the lawful source of his EB-5 investment.

We reopened the matter on motion in response to an update to the USCIS Policy Manual that clarifies its policy on debt arrangements. On October 30, 2018, USCIS updated its Policy Manual with a section titled "Redemption Language" that clarifies its policy on debt arrangements. The Policy Manual states:

> Any agreement between the immigrant investor and the new commercial enterprise that provides the investor with a contractual right to repayment is an impermissible debt arrangement. In such a case, the investment funds do not constitute a qualifying contribution of capital.
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> FN 20. *See Matter of Izummi*, 22 I&N Dec. 169, 188 (Assoc. Comm. 1998). *Matter of Izummi* addressed redemption agreements in general, and not only those where the investor holds the

[1] 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).

right to repayment. USCIS generally disfavors redemption provisions that indicate a preconceived intent to exit the investment as soon as possible, and notes that one district court has drawn the line at whether the investor holds the right to repayment. *See Chang v. USCIS*, 289 F.Supp.3d 177 (D.D.C. Feb. 7, 2018).

While this policy update resolved the Petitioner's capital at risk concerns, we issued a notice of intent to deny (NOID) seeking clarification regarding a lack of evidence demonstrating the Petitioner's investment fund derived from lawful sources. In response, the Petitioner submits additional evidence and maintains that he has shown eligibility for the EB-5 classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Upon de novo review, we will sustain 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. Regional centers apply for designation as such with 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). 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).

In addition, 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, 210-11 (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

The Petitioner indicates he invested $500,000 in the NCE on May 18, 2015.[3] According to the submitted business plan, the NCE seeks to raise up to $10,500,000 in EB-5 funds from 21 foreign national investors and purchase an equity interest in [redacted] the JCE. The JCE

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

plans to use the EB-5 capital and other funds for the conversion of a vacant 11-story office building into an apartment complex located in [redacted] WI.

In this case, the Petitioner alleges that his EB-5 capital derived from a 3,800,000 renminbi (RMB) gift from his parents' mortgage loan secured by their unencumbered real property. The Petitioner's parents purchased the underlying property in 2007 for 2,500,000 RMB and the monthly mortgage payments were between 6,000 RMB and 9,000 RMB monthly. In 2014, they repaid the 527,876 RMB balance on the mortgage loan. The record at the time of reopening did not demonstrate the Petitioner's parents had retained sufficient lawful earnings to purchase the property in 2006 or pay off the mortgage balance in 2014. Additionally, the record did not contain sufficient evidence to establish the employment and wage history for his mother.

In response to our NOID, the Petitioner submitted his parents' bank statements showing transaction histories and balance summaries from 2007 to 2015. These statements show deposits of wages as well as mortgage payments. Additionally, the Petitioner submitted employment and income statements from his mother's prior employers. We find the evidence in the record is sufficient to establish, by a preponderance of the evidence, that the Petitioner documented the lawful source and path of the funds he used to invest in the NCE.

III. CONCLUSION

We withdraw our previous decision and approve the visa petition.

ORDER: The appeal is sustained.