U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 07235200

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. Specifically, the Chief determined that the Petitioner did not document the lawful source of the funds she remitted to [redacted] the NCE, which is affiliated with [redacted] (the Regional Center), a United States Citizenship and Immigration Services (USCIS) designated regional center.[1] On appeal, the Petitioner submits additional evidence and maintains that she 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 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. 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).

[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).

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 she invested $500,000 in the NCE.[3] According to the June 2016 business plan, the NCE seeks to raise up to $75,000,000 in EB-5 funds from 150 foreign national investors to loan to [redacted] the JCE. The JCE plans to use the EB-5 capital and other funds for the development and construction of a 13-story building housing a 190-room luxury hotel and 20 blended condominium units located in [redacted] California. For the reasons discussed below, we find the Petitioner has not demonstrated, by a preponderance of the evidence, that her invested capital did not derive, directly or indirectly, from unlawful means.

In this case, the Petitioner alleges that her EB-5 capital derived from a 3,900,000 renminbi (RMB) mortgage loan secured by real property owned by the Petitioner's spouse. The record indicates the loan proceeds were deposited in the Petitioner's [redacted] Bank account on August 8, 2017. According to the Declaration of Currency Swap dated August 28, 2017, the Petitioner entered into a private currency swap agreement with [redacted] to convert the loan proceeds into USD funds. The initial record at the time of filing indicates the Petitioner transferred 3,900,000 RMB to [redacted]s [redacted] Bank account on August 21, 2017, and [redacted] then remitted $559,000 from her [redacted] Bank account in [redacted] to the Petitioner's [redacted] Bank account in [redacted] on August 25, 2017. The Petitioner then remitted her investment fund to the NCE on August 28, 2017.

The Chief issued a request for evidence (RFE) specifically noting that "[b]ecause [the] Petitioner's funds were routed through a [third party exchanger], and there is insufficient documentation to demonstrate the legitimacy of the funds in [redacted]'s [redacted] Bank account, [the] Petitioner bears the burden of demonstrating that the funds transferred by [redacted] to [the] Petitioner's [redacted] Bank account were obtained through lawful means." The Chief's RFE requested, among other things, evidence establishing how the loan proceeds were transferred or exchanged from [redacted]'s [redacted] bank account to her [redacted] Bank Account in [redacted] as well as documentation establishing the lawful source and path of funds involved in the transfer or exchange of funds. In her RFE response, the Petitioner offered, among other documents, a

[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(f)(2).

statement from [redacted] whereby she claimed to have exchanged the loan proceeds using [redacted], a professional legal currency exchange company licensed to operate in [redacted] stated she transferred 3,896,230 RMB of the Petitioner's loan proceeds to [redacted]'s [redacted] Bank [redacted] account on August 24, 2017, and in return, [redacted] transferred $559,000 to [redacted]'s [redacted] Bank account in [redacted] on the same day. The Petitioner also provided [redacted]'s bank account statements as well as a statement from [redacted] claiming [redacted]'s bank account is the company's designated account to receive RMB.

After reviewing the record in its entirety, the Chief observed that the Petitioner did not provide any documentation substantiating that [redacted] is licensed to exchange currency or an employee of [redacted]. The Chief also noted that the Petitioner had not provided documentation showing the loan proceeds in [redacted]'s account were transferred to [redacted] or that the account belonged to [redacted]. The Chief denied the petition, concluding the record lacked sufficient evidence to establish the lawful source or path of the Petitioner's EB-5 investment.

On appeal, the Petitioner submits additional evidence concerning the lawful source of her funds that she did not present to the Chief. The Petitioner offers printouts from [redacted]'s business website as well as a certification from [redacted] stating [redacted] was an employee of [redacted] and, based on the "need of business development," the company designated [redacted]'s bank account to receive RMB in mainland China on behalf of the company. The Petitioner, however, had already been put on notice of the required evidence, was given a reasonable opportunity to provide the evidence, and the evidence was reasonably available to the affected party at the time it was supposed to have been submitted.[4] The Petitioner now offers these documents without explaining why they were not available at the time of the RFE but are now available for submission on appeal. These documents were specifically requested by the Chief and the Petitioner did not indicate that the evidence submitted on appeal was not reasonably available at the time of the RFE. We will therefore review the record without considering the evidence submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose").

As discussed above, the Petitioner indicated the $500,000 deposited into the NCE derived from a currency swap of funds provided by [redacted]. However, the record at the time of decision does not sufficiently document the path or the source of the USD funds in [redacted]'s [redacted] Bank account that were then remitted to the Petitioner's [redacted] Bank account as part of the currency swap. First, the Petitioner did not sufficiently document [redacted]'s ability to engage in lawful currency exchanges in mainland China. The Petitioner provided documents indicating [redacted] was founded and licensed to do currency exchanges under the laws of [redacted]. However, the record indicates, without explanation, that [redacted] needed to use [redacted]'s personal bank account in China to receive the RMB funds. The Petitioner did not provide [redacted]'s bank account statements showing the RMB funds in this account were ultimately exchanged or used by [redacted]

[4] *See Oyeniran v. Holder*, 672 F.3d 800, 808–09 (9th Cir. 2012) ("It is not sufficient that the evidence physically existed in the world at large; rather, the evidence must have been reasonably available to the petitioner."). *See also INS v. Doherty*, 502 U.S. 314, 324 (1992) (the Attorney General did not abuse his discretion by denying motion to reopen to apply for asylum and withholding based on lack of new material evidence).

as part of its currency exchange business. The Petitioner also did not provide sufficient evidence showing was an employee of and authorized to conduct currency exchanges in mainland China. The record must trace the path of the funds back to a lawful source. *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. Here, the Petitioner did not provide sufficient evidence to show the path of the RMB funds in mainland China to the USD funds in that were ultimately used as the Petitioner's investment fund.

Although not discussed by the Chief in her final decision, we find the Petitioner has not sufficiently documented the lawful source of funds in s Bank account in The record only contains 's bank statements from her Bank account showing the deposit and withdrawal of funds. However, these statements do not document the source of the funds in the bank account. 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). While the record indicates has license to conduct currency exchanges in , the funds received in her Bank account derived from s use of s personal bank account in mainland China. In this case, it is not clear was licensed to conduct currency exchanges in mainland China and therefore the Petitioner has not provided sufficient evidence that the funds deposited in 's ed Bank account derived from lawful sources.

On appeal, the Petitioner argues should be considered the agent of under the law of principal and agent. However, the Petitioner has not provided sufficient documentation showing employee relationship with and does not cite any law indicating would, in this situation, be considered the agent of The Petitioner also argues that is a licensed currency exchange business in and operates under heavy regulations in and should therefore be given the presumption that its exchanged funds derived from lawful sources such as that provided to official financial institutions. We disagree. In this case, the Petitioner has only provided documentation indicating is authorized to conduct currency exchanges in The Petitioner did not sufficiently document s legal ability to conduct currency exchanges in mainland China and did not explain s reasoning for receiving RMB funds in the personal bank account of In this case, the Petitioner's use of a third party currency exchange is not entitled to any presumption of legality as to the source or path of the funds used in the exchange.

Next, the Petitioner argues USCIS's request for documentation from is not proper because the Petitioner need only show the lawful source of 's funds. We disagree. In this case, the funds in 's bank account were obtained by a currency exchange conducted by As discussed above, the Petitioner has not provided sufficient documentation showing the lawful source or path of funds used in the currency exchange. A petitioner must show that his or her invested capital did not derive, directly or indirectly, from unlawful means and must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(e) and 8 C.F.R. § 204.6(j)(3). Here, for the reasons discussed, the Petitioner has not made such a showing.

III. CONCLUSION

Based on the reasons stated above, we conclude that the Petitioner has not presented sufficient evidence tracing the path of the funds she received from [redacted] to a lawful source. *See* 8 C.F.R. § 204.6(e), (j)(3); *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. She has therefore not established by a preponderance of the evidence the lawful source of the funds she claims to have invested in the NCE.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.