U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27276022

Date: OCT. 18, 2024

Appeal of Immigrant Investor Program Office Decision

Form I-526E, Immigrant Petition by Regional Center Investor

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).[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. A noncitizen may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

The Chief of the Immigrant Investor Program Office (the Chief) denied the petition, concluding that the record did not sufficiently document the lawful source of the $505,000[2] he claimed to have invested in [redacted] the NCE, which is associated with [redacted] 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.

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

[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act (RIA), 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 filed their petition prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

[2] The Petitioner indicates that the NCE is in a targeted employment area, and that the required amount of qualifying capital is adjusted from $1,000,000 to $500,000. 8 C.F.R. 204.6(f)(2).

(and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii) (2018).

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 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.[3] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

The Petitioner asserts that he invested at least $500,000 in the NCE, funds he obtained as a gift from his mother through a loan secured by property in Vietnam given to her and her siblings. Per the business plan, the NCE "is funding up $144.45 million, of which $11 million will be sourced from up to 22 EB-5 investors," to develop, manage, and operate a hotel and restaurant in [redacted] Illinois.

On appeal, the Petitioner submits additional evidence for the purpose of resolving several inconsistencies and filling gaps in the path of his investment funds that were noted in the Chief's decision. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.; see also Matter of O-M-O-*, 28 I&N Dec. 191, 197 (BIA 2021) ("by submitting fabricated evidence, the appellant compromised the integrity of his entire claim") (cleaned up).

We acknowledge that the new evidence resolves some of the inconsistencies described in the Chief's decision, such as the transfer of property and land use rights from one of the Petitioner's mother's siblings to her. The contract and accompanying notary certification dated October 4, 2016, as well as the document titled "Certificate of Land Use Right, Ownership of House and Other Properties Associated with Land," clarify his mother's ownership of the property used as collateral for the loan she obtained, the proceeds of which the Petitioner asserts she gifted to him and served as the source of the investment funds. But even with this new evidence, gaps and inconsistencies in the record remain unresolved, particularly concerning the transfer of the investment funds from the Petitioner's bank account in Vietnam through multiple intermediaries to the NCE.

[3] 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).

Specifically, the Petitioner submitted documentation showing that he transferred VND 11.487 billion to a Vietnamese company named [redacted] He states that this was done on the advice of his former attorney, and that these funds were intended to be sent to that attorney's client trust account before being transferred to the NCE. However, as noted in the Chief's decision, there are several inconsistencies in the letter from [redacted] director, dated September 25, 2018. Although the letter initially states that $500,000 was received from the Petitioner, it later states that $550,000 was wired in four transactions. In addition, the listed amounts claimed to have been transferred in those four transactions add up to $505,000. Further, new evidence submitted with the appeal, a payment order dated April 14, 2017, for the transfer of funds from the Petitioner's [redacted] account to [redacted] account, indicates that the Petitioner transferred VND 11.487 billion to [redacted] not $500,000 as the letter claims, and the record lacks documentation of the conversion of these funds and the source of the $500,000 (or $550,000 or $505,000) claimed to have been transferred. The Petitioner does not offer additional evidence to resolve these discrepancies on appeal, but asserts that [redacted] has since reorganized and further documentation is unavailable. Nevertheless, it is the Petitioner's burden to resolve the inconsistencies noted in the Director's decision, which in this case leave substantial gaps in the path of the funds he claims were invested.

Critically, the Petitioner also does not offer additional evidence to establish the path of these funds from [redacted] to his former attorney's client trust account. The letter from [redacted] states that the funds were wired by "a money aggregator," which the letter later refers to as "our sources." But as noted by the Chief, this "aggregator" is not identified in the record, nor does it include documentation of [redacted] transfer of the Petitioner's funds to the aggregator. Although the Petitioner submits new evidence on appeal in the form of "instruction letters" purporting to show three transfers on his behalf to his former attorney's client trust fund, these documents do not identify the transferring party or the source of the funds claimed to have been transferred. In addition, only three of the four transfers listed in [redacted] letter are represented in these documents, totaling just $400,000.

Finally, regarding the last portion of the claimed transfer of funds, the Petitioner does not address the Chief's conclusions regarding the legality of the transfers by [redacted] and the unknown aggregator, or the comingling of the Petitioner's funds with those of other investors when transferred to his former attorney's client trust fund. The Petitioner has therefore not documented the complete path of his purported EB-5 investment, tracing the path of the funds back to a lawful source. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

III. CONCLUSION

For the reasons discussed above, we conclude that the Petitioner has not established, by a preponderance of the evidence, his eligibility for the requested classification. Specifically, he has not demonstrated the lawful source of his 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.

ORDER: The appeal is dismissed.