U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17927939

Date: OCT. 21, 2024

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) (2017).[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 Immigrant Investor Program Office denied the petition, concluding that the Petitioner did not document the lawful source of the $500,000[2] she claimed to have invested in [redacted] which is associated with [redacted][3] On appeal, the Petitioner submits a brief and additional evidence, maintaining that she has established eligibility for the EB-5 classification.

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, 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 March 2017, 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 downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2017).

[3] [redacted] is an entity that U.S. Citizenship and Immigration Services (USCIS) has designated to participate in the EB-5 program. 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) (2017).

(and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii) (2017).

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

II. ANALYSIS

In this case, the Petitioner claims to have invested $500,000 in the NCE. According to page 1 of the business plan, the NCE is managed by [redacted], and its "purpose is to provide up to $115 million in loans to fund the development, construction and operation of a . . . [redacted] California. Page 2 of the business plan explains that the NCE is selling "units of [its] interests . . . to investors," with each investor paying $500,000 for a unit of interest and $50,000 in administrative fee.

A March 2017 letter from the NCE's escrow agent and bank documents confirm that [redacted] remitted a total of $550,000 to the NCE's escrow account as the Petitioner's EB-5 funds and the associated administrative fee. The Petitioner claims that because of currency restrictions in Vietnam, she requested assistance from others to convert her Vietnamese Dong (VND) into U.S. Dollars (USD) and to move her funds from Vietnam to the United States. The record reveals that she relied on several individuals for the currency exchange and remittance transactions, including: (1) [redacted], the Petitioner's family friend; (2) [redacted] spouse; (3) [redacted] adult son; (4) [redacted] adult daughter; and (5) [redacted]

Under a March 2017 "Borrow Contract," the Petitioner lent VND 12,900,000,000 to [redacted], who agreed to repay the entire amount by sending $550,000 to [redacted] Under another agreement, a March 2017 "Authorization Letter," [redacted] agreed to accept the loan repayment discussed in the "Borrow Contract," and to send the $550,000 loan repayment to the NCE's escrow account as the Petitioner's EB-5 funds and the associated administrative fee.

The bank records show the following transactions: (1) between January and December 2017, [redacted] bank account in Vietnam received many large sum deposits; (2) in February 2017, [redacted]

[4] 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).

[redacted] received VND in his account in Vietnam from [redacted], and exchanged a portion of the VND into a total of $400,000; (3) in February 2017, [redacted] received VND in her account in Vietnam from [redacted], and exchanged a portion of the VND into $200,000; (4) in February and March 2017, [redacted] remitted a total of $600,000 to [redacted] U.S. account; (5) on March 2, 2017, the Petitioner remitted VND 12,900,000,000 to [redacted] account in Vietnam; (6) on March 9, 2017, [redacted] remitted $250,000 from her U.S. account to [redacted] Singapore account; (7) on March 15, 2017, [redacted] remitted an additional $300,000 from her U.S. account to [redacted] Singapore account; and (8) on March 16, 2017, [redacted] sent $550,000 from his Singapore account to the NCE's escrow account, listing the Petitioner's name and date of birth as the "payment details and purpose of payment."

There are multiple issues regarding the path of the Petitioner's purported EB-5 funds. First, the funds were routed through [redacted] Singapore account, specifically, he received $550,000 from [redacted] then remitted the same amount to the NCE's escrow account. The record, however, lacks evidence, such as [redacted] bank statements, confirming that the $550,000 did not comingle with other funds in the account. As the Petitioner acknowledges on appeal that money is fungible, she must document the lawful source of all the funds in [redacted] Singapore account before he remitted the $550,000 to the NCE's escrow account. *See Matter of Ho*, 22 I&N Dec. at 210-11 (noting that wire-transfer receipts by themselves are insufficient to demonstrate their lawful source); *see also Matter of Izummi*, 22 I&N Dec. at 195. The Petitioner has not made such a showing.

Second, the Petitioner has not sufficiently documented the lawful source of the $600,000 that [redacted] received from her adult children, [redacted] in February and March 2017, which then financed her $550,000 remittance to [redacted] The Petitioner points to a 2014 decree from Vietnam, and claims that it confirms the currency exchange and remittance transactions are legal under Vietnamese law. At issue, however, is not whether the individuals could engage in these transactions. Rather, at issue is whether the USD from [redacted] and her family members originated from a lawful source. For the reasons we will discuss below, we conclude that the record is insufficient to trace the USD back to a lawful source. *See Matter of Ho*, 22 I&N Dec. at 210-11; *see also Matter of Izummi*, 22 I&N Dec. at 195.

Initially, we note that the Petitioner sent VND 12,900,000,000 to [redacted] account in Vietnam on March 2, 2017, after [redacted] had already received $600,000 in her U.S. account from her adult children. This timeline does not support the proposition that the USD derived from the VND the Petitioner sent to [redacted]

Moreover, the evidence – including bank statements of [redacted] and [redacted] accounts – is insufficient to confirm the lawful source of the VND that [redacted] adult children converted into $600,00 and then sent to her. As noted, in February 2017, [redacted] received from [redacted] multiple VND deposits, and exchanged a portion of the VND into a total of $400,000 to send to [redacted] The $400,000 thus derived from the VND that were in [redacted] account. [redacted] bank statements reveal that there were multiple large sum deposits in January and February 2017. The Petitioner, however, has not sufficiently explained the nature of these deposits.

Similarly, in February 2017, [redacted] received a large sum deposit of VND in her account from [redacted] and exchanged a portion of the VND into $200,000 to send to [redacted] The Petitioner has not provided information about [redacted] explained the nature of this deposit, or provided evidence to document the lawful source of the funds from [redacted] *See Matter of Ho*, 22 I&N Dec. at 210-11; *see also Matter of Izummi*, 22 I&N Dec. at 195.

On appeal, the Petitioner contends that the $600,000 [redacted] received from her adult children derived from her and her family's business earnings in Vietnam. In an October 2020 statement, she acknowledged that the $550,000 she sent to [redacted] came from her adult children, who sent her a total of $600,000 in February and March 2017. She alleged that the "$600,000 . . . was accumulated income from [her] family's business [in Vietnam] over a long period of time," and that because her "family settled down in the United States since 2017," "the documents regarding the previous business [in Vietnam] were no longer fully kept." In a subsequent statement, dated February 2021, [redacted] reiterated that "[her] family ha[d] several specific businesses in Vietnam," including [redacted], but that since her family "have been living in the U.S., [their] business activities in Vietnam ended" and they "do not keep the majority of the business-related papers in Vietnam." She also stated that she is "not . . . able to provide documents relating to the family's previous businesses" and that "[a]ll of [her] family's business papers in Vietnam are mainly not existing." The Petitioner similarly indicated in her statement that she "could not find other informative detailed work papers" regarding [redacted] family businesses in Vietnam and noted that "financial issues are a private point." Additionally, in their February 2021 statements, [redacted] adult children both repeated her claim that the $600,000 they sent to their mother in February and March 2017 were "coming from [their] family's true and legal income of the previous businesses."

In addition to the above referenced evidence and statements, the record also includes: (1) a business registration certificate, indicating that [redacted] owned 14.17% of [redacted] also known as [redacted], a business that was registered in Vietnam in 2000; and (2) a printout from the Vietnam General Department of Taxation, Ministry of Finance, regarding [redacted] While the evidence confirms that [redacted] spouse, [redacted] owned a small portion of a business in Vietnam, it is insufficient to establish how much he and his family earned from this or any other unspecified businesses, or demonstrate that they had retained enough of their income in VND to convert them into the $600,000 that [redacted] adult children sent to her in February and March 2017.

The Petitioner argues on appeal that it is "undue burden" on her to provide evidence to document the lawful source of the USD that were in [redacted] and her adult children's accounts. While we acknowledge the passage of time since the possible creation of certain relevant documents, including those associated with [redacted] and her family's earnings and savings, we note that it remains the Petitioner's burden to document the lawful source of her EB-5 funds, which she routed through [redacted] and her family, and [redacted] and that she must offer sufficient documents 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; *see also Mo v. USCIS*, ___ F. Supp. 3d ___, 2024 WL 804267, *6 (D.D.C. Feb. 27, 2024) (noting that USCIS did not err in requesting documents from many years ago to confirm a foreign national had accumulated sufficient lawful funds to purchase certain properties).

Furthermore, the Petitioner argues on appeal that she has established the lawful source of the USD in [redacted] and her adult children's accounts, because [redacted] and her spouse have been lawful U.S. permanent residents since 2018; their adult daughter, [redacted] has been a lawful U.S. permanent resident since 2017, having immigrated through the EB-5 program; and their adult son, [redacted] is a permanent resident in Canada. The Petitioner maintains that these individuals have "undergone extensive criminal background checks." The Petitioner has not established that the immigration history of individuals who are involved in the currency exchange and remittance transactions confirms the source of the funds in their accounts, or the source of the Petitioner's purported EB-5 investment. At issue is whether the record is sufficient to document the lawful source of her EB-5 funds, not the immigration status of individuals involved in the path of such funds.

Based on the above discussed reasons, we find that without additional corroborating evidence, the record lacks sufficient evidence confirming that the Petitioner's purported EB-5 investment, which she routed through [redacted] and her family members, did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e). The record, including documentation the Petitioner offers on appeal, does not sufficiently document the complete path of her purported EB-5 investment, tracing it 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 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. As the identified reasons for dismissal are dispositive of her appeal, we decline to reach and hereby reserve remaining issues concerning her eligibility.[5] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also 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).

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.

[5] The Petitioner claims that she obtained the VND 12,900,000,000 that she remitted to [redacted] from her mother and aunt, who gifted the funds to her. The Petitioner also indicates that her mother and aunt acquired the gifted funds through proceeds of loans they secured with their properties. In addition, the Chief observed in the denial that government records indicate that [redacted] have been involved with multiple foreign national investors' currency exchange and remittance transactions and have failed to document the lawful source of the USD involved in these transactions. We will not address these or other eligibility issues in this decision. Instead, we will reserve any eligibility issues not discussed in this decision for future consideration if the need arises.