U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35340865

Date: OCT. 24, 2024

Appeal of Immigrant Investor Program Office Decision

Form I-526, Immigrant Petition by Standalone 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 establish that the Petitioner's investment funds were obtained through lawful means. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. Subsequent to filing her appeal, the Petitioner filed a complaint in the United States District Court for the Southern District of Maryland seeking adjudication of the appeal.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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

[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.

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.[2] *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 $500,000[3] into [redacted] the NCE, which is associated with [redacted] This NCE proposes to pool up to $200,000,000 from 400 immigrant investors, funds which will be loaned to the job-creating entity, [redacted] to develop a condominium tower in [redacted] New York.

The Chief concluded that the evidence did not show the exchange of the Petitioner's funds from VND to USD, and did not show the complete path of the Petitioner's funds from her transfer to an authorized agent of [redacted] to that company's transfer of $500,000 to the NCE's [redacted] Escrow Services account. On appeal, the Petitioner submits additional evidence and asserts that the complete path of her funds was demonstrated, as her funds did not leave Vietnam but were routed through [redacted] in a value transfer exchange.

Upon de novo review, we are remanding this case for the Chief to consider the additional evidence submitted on appeal and added to the record.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[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 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).