U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15903910

Date: OCT. 26, 2021

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 establish he invested the required amount of capital into [redacted] the NCE, as required by 8 C.F.R. §§ 204.6(f)(1), (j)(2). Additionally, the Chief determined the Petitioner did not invest in a new commercial enterprise or that the NCE is principally doing business, and creates jobs, in a targeted employment area. On appeal, the Petitioner 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 dismiss the appeal.

I. LAW

To be eligible for the EB-5 classification, a petitioner must show that he or she "has invested or is actively in the process of investing the required amount of capital." 8 C.F.R. § 204.6(j)(2). The regulation defines "invest" to mean "to contribute capital," and specifies that capital includes "cash, equipment, inventory, other tangible property," and "cash equivalents." 8 C.F.R. § 204.6(e). The full amount of money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based. *Matter of Izummi,* 22 I&N Dec. 169, 179 (AAO 1998).

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

II. ANALYSIS

The Petitioner's initial application indicated he invested $287,919.60 in the NCE on March 31, 2004.[2] According to the business plan, the NCE operates an [redacted] business in [redacted] New York. For the reasons discussed below, we find the Petitioner has not demonstrated, by a preponderance of the evidence, that his invested capital did not derive, directly or indirectly, from unlawful means.

In this case, the Petitioner alleged in his initial application that he had invested $92,500 into the NCE when it was established in 2004 along with $2,200,000 worth of assets purchased for use in the enterprise and good will of the business allegedly worth $1,500,000. The Chief's decision, among other things, questioned the lawful source of the $92,500 invested in the NCE. In her decision, the Chief indicated the Petitioner alleged the $92,500 derived from his employment with [redacted] businesses in the United States from 1985 until 2005 but USCIS records indicated the Petitioner had not received employment authorization until 1999. The Chief also questioned the Petitioner's ownership over the assets and the value of the good will invested in the business.

However, neither the Petitioner's appellate brief nor the evidence submitted on appeal address his employment authorization from 1985 to 1999 and therefore whether the funds he invested in the NCE derived from lawful sources. When dismissing an appeal, we generally do not address issues that were not raised with specificity on appeal. Issues or claims that are not raised on appeal are deemed to be "waived."[3] Since the Petitioner did not address this issue with specificity on appeal, we deem the issue waived and find the Petitioner has failed to show, by a preponderance of the evidence, that his invested capital did not derive from unlawful means. 8 C.F.R. § 204.6(e).

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the establishment of the NCE, whether the investment funds were invested in a targeted employment area, or whether the Petitioner invested the required amount of capital. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they

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[1] 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).

[2] The Petitioner' initial application indicated the NCE was not in a targeted employment area but, in response to the Chief's RFE, claimed that the NCE is actually 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).

[3] *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). The courts' view of issue waiver varies from circuit to circuit. *See Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (finding that issues not raised in a brief are deemed waived); *Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996) (finding that an issue referred to in an affected party's statement of the case but not discussed in the body of the brief is deemed waived); *but see Hoxha v. Holder*, 559 F.3d 157, 163 (3d Cir. 2009) (issue raised in notice of appeal form is not waived, despite failure to address in the brief).

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).

III. CONCLUSION

Based on the reasons stated above, we conclude that the Petitioner has not documented the lawful source of his EB-5 capital. *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. Specifically, he has not demonstrated, by a preponderance of the evidence, the lawful source of the funds 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.