U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20430317

Date: OCT. 28, 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) (2019).[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 Acting 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] the NCE, which is associated with [redacted][3] The Acting Chief also concluded that the record did not establish that the NCE would create the necessary number of jobs. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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.

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[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 November 2017, the relevant law then in existence governs this appellate adjudication.

[2] The Petitioner indicates on the petition 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) (2019).

[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) (2019).

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 other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii) (2019).

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. The most recent business plan claims the NCE seeks to raise up to $35,000,000 in EB-5 funds from 70 immigrant investors to loan to [redacted] the job creating entity (JCE). The JCE plans to use the EB-5 capital and other funds to renovate an existing ski resort into a year-round vacation resort and is located in [redacted], New Hampshire.

The Acting Chief issued a notice of intent to deny (NOID) the petition, notifying the Petitioner that she did not submit sufficient evidence documenting the path or lawful source of her EB-5 capital and that the evidence relating to the NCE's projected employment creation did not establish that the NCE would likely create the requisite number of jobs for qualifying employees within two years. *See* 8 C.F.R. § 204.6(j)(4)(i)(B) (2019). Among other things, the Acting Chief raised concerns regarding apparent discrepancies with the Petitioner's claimed proceeds from the purchase and sale of real property, including a lack of evidence showing the lawful source of funds used for the initial purchase of the property, as well as the lawful business activity of the entities that later purchased the property.

In response to the NOID, the Petitioner stated that "it is [her] contention that the documents provided with the original submission were sufficient to establish the source and path of funds. As such, there is nothing more [the Petitioner] can provide other than what was provide [sic] before, and [she]

[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).

requests a reevaluation of the record." The Petitioner also submitted additional evidence regarding the projected employment creation of the NCE.

After reviewing the record, the Acting Chief denied the petition, concluding that the business plan and economic reports did not demonstrate that the NCE would likely create the requisite number of jobs within two years. *See id.* The Acting Chief also concluded that the Petitioner provided insufficient evidence that her EB-5 capital did not derive, directly or indirectly, from unlawful means. *See* 8 C.F.R. § 204.6(e).

On appeal, the Petitioner submits a brief with no additional evidence. The Petitioner reiterates her claim that the information provided with the original submission is sufficient to establish her eligibility. Concerning the lawful source and path of funds for her EB-5 capital, the Petitioner states that she "has clearly established that she has invested the required $500,000 from her own lawfully obtained funds into the commercial enterprise." However, she does not provide additional information or documentary evidence regarding these funds. Nor does she address the Acting Chief's determination that the evidence regarding the source of funds is deficient.

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). *See also Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Here, the Petitioner invested funds she claims were obtained from the proceeds of the sale of real property in Italy that she obtained through a divorce settlement. However, as noted by the Chief, the record lacks evidence demonstrating that the funds the Petitioner and her former spouse used to acquire the property in Italy were derived from lawful sources. Additionally, the record lacks evidence demonstrating that the funds used by several commercial entities to purchase the property in Italy were derived from lawful sources. The Petitioner declined to provide additional evidence on this issue in response to the Chief's NOID and she does not provide new evidence to address this issue on appeal. As the record does not demonstrate the source of funds used to acquire the property in Italy, the Petitioner has not shown by a preponderance of the evidence that the proceeds from the sale of that property derived from lawful sources and satisfy the regulatory definition of capital.

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 whether the NCE would likely create the requisite number of jobs for qualifying employees within two years. *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 met that burden.

ORDER: The appeal is dismissed.