U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19826150

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). This fifth preference 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 U.S. economy and create at least 10 full-time positions for qualifying employees. Foreign nationals may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, section 610, as amended by section 575 of Pub. L. No. 114-113 (2015).

The Chief of the Immigrant Investor Program Office denied the petition, concluding the record did not establish (1) that the capital, which has been invested by the Petitioner or which the Petitioner is actively in the process of investing, is capital obtained through lawful means and (2) that the NCE will create at least 10 full-time positions for qualifying employees. The Chief did not defer to the job creation determination in USCIS' previous approvals of the Form I-526 exemplar project and previously filed Forms I-526 associated with the NCE because the Chief determined that the underlying facts upon which a favorable decision was made have materially changed and that the previously favorable decision was legally deficient. The matter is now before us on appeal. *See* 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

Volume 6, Part G, Chapter 3 of the USCIS Policy Manual articulates USCIS' policy regarding deference to previous agency determinations:

> As a general matter, USCIS does not reexamine determinations made earlier in the EB-5 process, and such earlier determinations will be presumed to have been properly

> decided. When USCIS previously concluded that an economic methodology is reasonable to project future job creation as applied to the facts of a particular project, USCIS defers to this determination for all related adjudications directly linked to the specific project for which the economic methodology was previously approved.
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> Conversely, USCIS does not defer to a previously favorable decision in later proceedings when, for example, the underlying facts upon which a favorable decision was made have materially changed, there is evidence of fraud or misrepresentation in the record of proceeding, or the previously favorable decision is determined to be legally deficient. A change is material if it would have a natural tendency to influence or is predictably capable of affecting the decision. *See Kungys v. United States*, 485 U.S. 759, 770-72 (1988). When a new filing involves a different project from a previous approval or the same previously approved project with material changes to the project plan, USCIS does not defer to the previous adjudication.

See generally 6 USCIS Policy Manual G.3(A)(2), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-3.

As required by 8 C.F.R. § 204.6(j)(4)(i), the petition must establish that the investment of the required amount of capital in an NCE will create full-time positions for at least 10 qualifying employees within two years. *See also* 8 U.S.C. § 1153(b)(5)(A)(ii). For purposes of the Form I-526 adjudication and the job creation requirements, the two-year period described in 8 C.F.R. § 204.6(j)(4)(i)(B) is deemed to commence six months after the adjudication of the Form I-526.

According to 8 C.F.R. § 204.6(j)(4)(i), to show that an NCE will create full-time positions for at least 10 qualifying employees within two years, the petition must be accompanied by:

> (A) Documentation consisting of photocopies of relevant tax records, Forms I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
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> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

A petition is not required to demonstrate that 10 full-time positions for qualifying employees have already been created by the commercial enterprise. However, where the jobs have not already been created, the petition must include a comprehensive business plan demonstrating the need for at least 10 employees within the next two years. *Matter of Ho* explained that a comprehensive business plan must be sufficiently detailed to permit USCIS to draw reasonable inferences about job-creation potential. *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998).

Petitioners investing in an NCE within a regional center may rely on economic methodologies to demonstrate that the investment will create indirect jobs as a result of the investment in the NCE, but such methodologies must be reasonable. *See* Pub. L. No. 102-395; 8 C.F.R. §§ 204.6(e), (j)(4)(iii),

(m)(7)(ii). The petitioners must provide sufficient evidence for USCIS to determine whether methodologies used are reasonable.

Indirect jobs are those that are held outside of the NCE but are created as a result of the NCE.[1] For example, indirect jobs include, but are not limited to, those held by employees of the job-creating entity (JCE) (when the JCE is not the NCE) as well as employees of producers of materials, equipment, or services used by the NCE or the JCE.[2]

Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6(e). A petitioner must demonstrate by a preponderance of the evidence that the capital was their own and was obtained through lawful means. 8 C.F.R. § 204.6(j)(3); *see also Matter of Ho*, 22 I&N Dec. at 210. To show that the capital was their own, a petitioner must document the path of the funds. *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the NCE. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. The record must trace the path of the funds back to a lawful source. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

The Petitioner claimed on page 6 of her petition that on September 22, 2017, she invested $500,000[3] into [redacted][4] (NCE), which is sponsored by [redacted][5] (the Regional Center). According to the Confidential Private Placement Memorandum, the NCE proposes to raise $35,000,000 from 70 immigrant investors and lend the entire amount to [redacted][6] the job-creating entity (JCE).

The business plan of the [redacted] dated October 2010, indicates that the JCE intends to expand and upgrade an existing 2,100 acres ski resort, including a 7,000 yards 18-hole golf course, in [redacted] New Hampshire, to create a four-season vacation resort by improving ski lifts and snowmaking equipment and enhancing the resort's summer activities, including a zip-line course, mountain biking trails, tennis, horseback riding, swimming, boating, fishing, and golf course. The JCE also intends to expand and reconstruct existing two lodge buildings by adding 35 new overnight

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[1] *See generally* 6 *USCIS Policy Manual* G.2(D)(4), https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2.
[2] *Id.*
[3] On March 15, 2022, President Joe Biden signed the EB-5 Reform and Integrity Act of 2022, which made significant amendments to the EB-5 program, including the designation of a targeted employment area (TEA) and the minimum investment amounts. *See s*ection 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner filed her petition in 2017 and asserted that the project is in a TEA. Therefore, the requisite amount of capital investment was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2015).
[4] On August 19, 2020, a Limited Partnership Amendment was filed with the State of New Hampshire, Department of State, for [redacted] and the name of the limited partnership was changed to [redacted]
[5] On March 17, 2023, a Limited Liability Company Certificate of Amendment to the Certificate of Formation was filed with the State of New Hampshire, Department of State, for [redacted] and the name of the limited liability company was changed to [redacted]
[6] On January 25, 2021, the name of [redacted] was changed to [redacted]

accommodations, spa facilities, common meeting rooms, retail shops, expanded rental and administration offices, and services desk for outfitters for summer and winter.

The Petitioner asserted that she derived her investment funds through her spouse, [redacted] accumulated employment income from [redacted] a mining and production company in Russia. To support this claim, the Petitioner submitted (1) her spouse's employment certificate from [redacted] (2) her spouse's individual income tax certificates from 2003 to 2012, (3) a letter from [redacted] the deputy chief of operation desk at [redacted] (4) certificates of state registration of the title for various real properties owned by the Petitioner or her spouse in [redacted] Russia, (5) a confirmation letter from the Regional Center confirming the receipt of $500,000 from the Petitioner into the NCE's escrow account on October 3, 2017, and (6) a transaction receipt showing the transfer of $545,000 from the Petitioner's spouse's [redacted] account ending in 0687 to the NCE's escrow account on October 2, 2017.

The Chief questioned the claimed lawful source and path of the $500,000 invested in the NCE. Specifically, in a notice of intent to deny (NOID), the Chief requested for evidence of the lawful source of the funds in the spouse's [redacted] account ending in 0258, evidence demonstrating the accrual and maintenance of the spouse's employment income in his [redacted] account ending in 0258, evidence demonstrating the transfer of funds from the spouse's [redacted] account ending in 0258 to his [redacted] account ending in 0687, evidence showing the exchange of Russian rubles for U.S. dollars prior to wiring the Petitioner's investment funds to the NCE, and evidence to establish the identity of the Petitioner's spouse due to different names used by him in the documents submitted to USCIS and U.S. Department of State. In response to the NOID, the Petitioner claimed that the documents provided with the original submission were sufficient to establish the source and path of funds and did not address the deficiencies noted in the Chief's NOID.

On appeal, the Petitioner contends that there is no material change in the business plan because the items identified by the Chief are not items essential to being *Matter of Ho* compliant and because the ability to satisfy a debt obligation is not a requirement under *Matter of Ho*. The Petitioner also claims that the Regional Center submitted an economic report based on the information and variables from the original date of the application using RIMS II, which demonstrates that enough jobs were created by the JCE. However, the Petitioner's appellate brief does not address the deficiencies noted in the Chief's decision regarding her investment funds and, therefore, does not discuss whether the funds she invested in the NCE derived from lawful sources. Rather, the Petitioner asserts that the information provided with the original submission properly addresses the issues raised in the Chief's decision.

Upon de novo review, we agree with the Chief that the Petitioner has not established by a preponderance of the evidence that the funds invested by the Petitioner have been obtained through lawful means. The Petitioner's spouse's employment and income tax certificates show that he worked for and earned employment income from the claimed employer and paid income taxes from 2003 to 2012. While the Petitioner submitted a transaction receipt showing the transfer of $545,000 from her spouse's [redacted] account ending in 0687 to the NCE's escrow account on October 2, 2017, the record lacks complete bank statements or other sufficient evidence to support the claim that the spouse accrued and maintained his employment income in his [redacted] account ending in 0258 that were allegedly sent to his [redacted] account ending in 0687. The record includes a letter

from the deputy chief of operation desk at [redacted] purportedly describing the claimed lawful source funds in the spouse's [redacted] account ending in 0258 and the claimed path of funds from the spouse's [redacted] account ending in 0258 to his [redacted] account ending in 0687 and then to the NCE's escrow account. However, the record does not contain sufficient documentary evidence to support claims of the lawful source and claims of the path of how funds arrived in the spouse's [redacted] account ending in 0687 and whether they were maintained and accumulated as claimed. *See Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195 (holding that a petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds in the NCE and that the record must trace the path of the funds back to a lawful source). *See also Borushevskyi v. United States Citizenship and Immigration Services*, 664 F.Supp.3d 117, 128-29 (D.C.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (stating that USCIS' complete path interpretation of the regulations is its authoritative position as explained in the 1998 precedential decisions and that these decisions require the petitioner to establish the complete path of funds to demonstrate that the funds were obtained through lawful means).

When dismissing an appeal, we generally do not address issues that were not raised with specificity on appeal. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Because the Petitioner did not address the issue regarding her investment funds with specificity on appeal, we deem the issue waived and determine the Petitioner has not shown by a preponderance of the evidence that her invested funds did not derive from unlawful means. *See* 8 C.F.R. §§ 204.6(e), (j)(3).

Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to address the Petitioner's appellate arguments regarding the job creation requirements. *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 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). We will reserve these issues for future consideration should the need arise.

III. CONCLUSION

The Petitioner has not adequately documented the claimed lawful source and path of her investment funds. *See* 8 C.F.R. §§ 204.6(e), (j)(3); *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195. Specifically, she has not provided sufficient evidence demonstrating that her spouse's employment income was accumulated and maintained in his bank account until deployment to the NCE's escrow account. As the record does not sufficiently demonstrate that the funds invested by the Petitioner have been obtained through lawful means, the Petitioner has not shown by a preponderance of the evidence that she is eligible for the immigrant investor visa classification.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.