U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20394201

Date: OCT. 31, 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).[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 (the Acting Chief) denied the petition, concluding that the record did not establish the lawful source of the $500,000[2] that the Petitioner claimed to have invested in [redacted] the NCE, which is associated with [redacted] In addition, the Acting Chief concluded that the record did not establish that the NCE would create the required number of jobs. The matter is now before us on appeal pursuant to 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

A noncitizen may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. The required funds may be invested 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) (2018).

---

[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.

[2] 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).

An investor 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, they must show that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show that the invested funds was obtained through lawful means, a petitioner must produce evidentiary documents listed at 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 and the record must trace the complete path of the funds back to a lawful source.[3] *Borushevskyi v. USCIS*, 664 F. Supp. 3d 117, 129 (D.D.C. 2023), *aff'd*, 2024 WL 2762146 (D.C. Cir. May 30, 2024) (holding that demonstrating a "complete path" of funds is USCIS' authoritative position recognized by other relevant precedent decisions); *see also 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).

In addition, 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.

II. ANALYSIS

The Petitioner claims to have invested $500,000 in the NCE, which proposed to pool $35 million from 70 EB-5 investors to lend to the job creating entity (JCE), [redacted] The JCE intends to use these and other funds to renovate an existing ski resort in [redacted] New Hampshire, creating a year-round vacation resort including additional lodging, a zipline course, and spa facilities.

In their notice of intent to deny (NOID), the Acting Chief notified the Petitioner of several deficiencies in the record. Regarding the evidence of the lawful source and path of the Petitioner's funds, the Acting Chief noted unexplained discrepancies amongst conflicting evidence within the record and between the record and information from United States government sources. Specifically, among other issues, they noted that the record includes two conflicting Russian tax forms (Forms 3-NDFL) for 2009 showing that the Petitioner had either two or three employers that year, and that when applying for a nonimmigrant visa in 2015, the Petitioner provided information about his employment that conflicts with the Forms 3-NDFL for that year in the record. The Acting Chief notified the Petitioner that he must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Also, the Acting Chief stated in the NOID that the record lacked evidence of the Petitioner's accrual and maintenance of the investment funds, such as bank and investment account statements, and that

[3] 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).

there was a break in the path of funds from the Petitioner's [redacted] account ending in 1852 to his [redacted] account ending in 5195. The Acting Chief further noted that the Petitioner had not established that the investment in the NCE will create full-time positions for at least 10 qualifying employees.

Despite the Acting Chief's notification to the Petitioner of these discrepancies and deficiencies in the evidence concerning the lawful source of his investment funds, the Petitioner chose not to submit additional evidence in this matter when responding to the NOID. Instead, he stated that the evidence already in the record was sufficient, and that "there is nothing more [the Petitioner] can provide other than what was provide [sic] before, and respectfully requests a reevaluation of the record." The Acting Chief concluded that, based upon the noted deficiencies and discrepancies, the Petitioner had not established that the funds he claimed to have invested were obtained through lawful means. Also, while the Petitioner submitted additional evidence regarding the NCE's projected employment creation in his NOID response, the Acting Chief concluded in their decision that the Petitioner had not established that the NCE would likely create the requisite number of qualifying jobs within the required period of time.

On appeal, the Petitioner submits a brief which references a new letter from the NCE, but no additional evidence is included. Without specifically referencing the deficiencies and discrepancies regarding the lawful source and path of his investment funds that were identified in the Acting Chief's NOID, he states that he "rests on the evidence submitted."

As stated above, a petitioner must demonstrate by a preponderance of the evidence that their invested funds did not derive from unlawful sources, and must submit evidence identifying the sources of the funds. See 8 C.F.R. §§ 204.6(e), (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 claims his investment funds derived from his employment with several companies in Russia, but he did not address the discrepancies raised by the Acting Chief in their NOID in any detail or submit additional evidence to resolve those discrepancies, nor does he do so on appeal. Accordingly, they remain unresolved. *Matter of Ho*, 19 I&N Dec. at 591-92.

Beyond those discrepancies, the Acting Chief also noted a break in the path of the Petitioner's funds. Specifically, the record includes a statement from the Petitioner's [redacted] account ending in 1852 that shows a "partial withdrawal" of $600,000 on March 28, 2016, which offers no indication of the reason for the withdrawal or any further transfers of those funds. Another statement for an account ending in 7355 shows a $600,000 credit due to a wire transfer on the same day. However, the statement names neither the account holder nor the bank, and states that the wire transfer was made "via [redacted] Bank." While the record indicates that these funds were transferred from this account to a [redacted] bank account in the Petitioner's name, also on March 28, 2016, this evidence does not demonstrate the lawful source of the funds.

In addition, the Acting Chief noted in their decision that the Petitioner had not submitted evidence of the accumulation and maintenance of his EB-5 investment funds, despite the explanation of this deficiency in the NOID. While the Petitioner's tax documentation for the years 2006 through 2015 demonstrate his earnings in those years, they do not demonstrate that he accrued and maintained his employment income to fund his investment. As the Petitioner has not addressed this deficiency on

appeal, he has not demonstrated the lawful source of the RUB 41,127,074 transferred from his [redacted] account ending in 1851 to his account with the same bank ending in 1851.

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 qualifying jobs within two years. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

ORDER: The appeal is dismissed.