U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Y-S-

DATE: SEPT. 20, 2017

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: 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 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 record did not establish, as required, that the Petitioner had invested capital deriving from a lawful source. The Chief denied a subsequent motion to reopen.

On appeal, the Petitioner asserts that her later submissions clarified earlier discrepancies and that she has not materially changed her explanation for the source of the funds she invested.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in an NCE. The commercial enterprise can be any lawful business that engages in for-profit activities. The foreign national must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees.

The invested capital must not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e) (defining capital). To show the lawful source of the capital, a petitioner must submit evidence such as foreign business and tax records or documentation identifying any other source(s) of funds. 8 C.F.R. § 204.6(j)(3). Bank letters or statements corroborating the deposit of funds, by themselves, are insufficient. *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. *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195.[1]

Regarding job creation, a petitioner who has not created the necessary number of jobs must submit a "comprehensive business plan" which demonstrates that due to the nature and projected size of the NCE, the need for not fewer than 10 full-time qualifying employees will result within the next two years. 8 C.F.R. § 204.6(j)(4)(i)(B).

II. ANALYSIS

The Petitioner contributed $1 million[2] in capital to [redacted] (the NCE), an existing business engaged in vehicle conversions and sales, which proposes to use the funds to expand into the aerospace industry. The Chief found that the Petitioner materially changed her basis of eligibility, first indicating that the funds derived from a loan from the company in which she had an interest and subsequently contending that her father owned those shares, borrowed the funds, and gifted them to her. On appeal, she affirms that there was no change in the facts of the case and any clarification of that information was not material. While we use a somewhat different analysis than the Chief outlined, we find the Petitioner has not sufficiently resolved the discrepancies the Chief identified. Moreover, as an additional issue, the record does not sufficiently support the credibility of the business plan.

A. Source of Funds

The initial cover letter stated that the Petitioner "lawfully obtained the invested funds through a shareholder loan from a company she owns in Australia," [redacted] The letter continues that the [redacted] Branch, issued a revolving term loan advance of $1 million, which [redacted] remitted to her personal bank account in the United States. Finally, it describes exhibit A.9 as "the executed loan agreement between the Australian company and the investor." In support of these contentions, she offered a document entitled "Shares provident" in which five shareholders, including her father, confirmed that she "has the 20% shares of [redacted] and that she is one of our shareholders."

The initial submission included two loan related documents. In January 2014, [redacted] advised the [redacted] that it wished to draw down a $1 million advance to be transmitted to the Petitioner. Exhibit A.9 is entitled Loan Agreement and dated a few days after the notification to the bank and the outgoing wire funds transfer. The agreement identifies [redacted] as "the borrower" and the

[1] These requirements confirm that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (holding that a petitioner had not established the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

[2] The Petitioner indicates that the NCE is not located in a targeted employment area; thus requisite amount of qualifying capital is $1 million. *See* 8 C.F.R. § 204.6(f).

Petitioner as the "lender." A representative of the company, however, signed as the lender. The spaces for the borrower's name and signature are blank.

Subsequently, the Petitioner changed her account. In a cover letter to a later submission, she maintained that she was presenting "clarifying evidence" to show that her "source of funds is a gift from her father, not a loan from the company." In a declaration, her father, states that he made the investment in holding it "in trust for (and for this benefit of)" the Petitioner. She offered a different loan agreement, dated the same day as the earlier one, which lists as the borrower of $1 million from Finally, she provided three letters from one attesting to his prior income, another authorizing a official to transfer the funds to the Petitioner, and an additional verifying that the money was a gift to her.

On her motion before the Chief, the Petitioner presented a joint declaration that she and her father signed. They affirm again that held the interest in trust for her and the other shareholders knew of the arrangement and contend that the Shares provident document is "correct in spirit in describing the intention of the parties" but is "legally inaccurate." They maintain that the language regarding her ownership interest in while "'in-artfully' drafted," was not meant to be misleading. On appeal, the Petitioner offers no new evidence. Rather, she argues that the material facts are not in dispute and she has not changed the facts relating to the source of her funds, which was a loan from

The documents the Petitioner has presented after the initial filing contradict rather than clarify the original submission. The record does not resolve why both loan agreements are dated several days after the drawdown notice and the transfer of funds to her. In the joint declaration from the Petitioner and her father, they refer to the motion brief as elaboration of why it is not a "violation of company policy or Chinese law" that "the loan proceeds were released prior to the date on the actual loan agreement." The motion brief, however, makes no mention of company policy or Chinese law. Rather, it cites one of our 2005 non-precedent decisions discussing the intentions of a company planning to borrow funds from an NCE pursuant to a business plan. This decision was not published as a precedent and therefore does not bind U.S. Citizenship and Immigration Services officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Additionally, the decision examined the credibility of a business plan and accepted as persuasive a post-filing agreement solidifying an intent manifested previously. The Petitioner has not explained how those facts relate to whether a loan agreement that postdates the transfer of money corroborates that the transfer was, in fact, a loan.

Moreover, unlike our 2005 decision on which the Petitioner relies, she has not resolved that she presented two loan agreements bearing the same date but significantly different information as to the parties of the loan. In addition, the record contains inconsistent documentation regarding the ownership of shares in She must resolve these discrepancies 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). The record, however, contains no explanation for the contradictory loan documentation submitted. The Petitioner has also not offered corroboration settling this inconsistency, such as a legal trust agreement confirming that holds those shares in trust for her. Accordingly, she has not consistently and credibly established the lawful source of her funds.

B. Business Plan

The Petitioner invested in a preexisting business and thus must demonstrate that her capital will result in the creation of 10 new jobs at the NCE. 8 C.F.R. § 204.6(j)(4); *Matter of Hsiung*, 22 I&N Dec. 201, 204-05 (Assoc. Comm'r 1998). The NCE engages in automobile conversion and distribution. According to the business plan, it will use her funds to expand "into the aerospace aluminum manufacturing segment." The plan contends that the NCE already has "$30,000 worth of aerospace backlog orders and has turned away another $20,000 worth of orders due to production thresholds." It further states that the NCE "currently supplies aerospace machined goods as a tier 2 supplier to and (all of which are tier 1 suppliers to ' The new equity would allow the NCE to add three machines and hire 10 new employees. To demonstrate future job creation, the Petitioner must submit a comprehensive and credible business plan that includes, amongst other things, executed contracts for supply and distribution of its products. *Matter of Ho*, 22 I&N Dec. at 213. The NCE's balance sheet as of March 31, 2013, however, does not list any of these companies under "Customer Deposits." The sales projections do not anticipate income from until 2016 and does not include income from either or The record does not contain any supporting evidence, such as letters of interest from prospective aerospace customers, estimates from contractors to upgrade the location, or negotiations with machine suppliers. For these reasons, the Petitioner has not presented a comprehensive credible business plan explaining the need for an additional 10 employees.

III. CONCLUSION

The Petitioner has not submitted consistent and credible evidence documenting the source of her funds or a comprehensive and credible business plan projecting the need for 10 new employees.

ORDER: The appeal is dismissed.

Cite as *Matter of Y-S-*, ID# 576687 (AAO Sept. 20, 2017)