U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 06797245

Date: SEPT. 24, 2020

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 document the lawful source of the funds she remitted to [redacted], the NCE, which is affiliated with [redacted] (the Regional Center), a United States Citizenship and Immigration Services (USCIS) designated regional center.[1] On appeal, the Petitioner submits additional evidence and maintains that she 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

A foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in a NCE. 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. An immigrant investor may invest the required funds directly in an NCE or through a regional center. Regional centers apply for designation as such with USCIS. Designated regional centers identify and work with NCEs, which in turn are associated with a specific investment project taken on either directly by the NCE, or by one or more separate entities known as the "job creating entity" (JCE). 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).

[1] 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).

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

II. ANALYSIS

The Petitioner indicates she invested $500,000 in the NCE.[3] According to the submitted business plan, the NCE seeks to raise up to $72,000,000 in EB-5 funds from 144 foreign national investors and lend the entire amount to [redacted] the JCE. The JCE plans to use the EB-5 capital and other funds for the construction of a [redacted] destination resort and waterpark in [redacted], Georgia. As we will explain below, we find that the Petitioner has not established, by a preponderance of the evidence[4] her eligibility for the classification. Specifically, she has not documented the lawful source of her funds.

In this case, the Petitioner alleges that her EB-5 capital derived from 12,808,000,000 Vietnamese Dong (VND) in cash gifts from her spouse and in-laws. The record indicates the gift funds were deposited in the Petitioner's [redacted] Bank account on November 14, 2016. The Petitioner claims that, due to the currency exchange restrictions in Vietnam, she sought the assistance of [redacted] to exchange her VND into USD and transfer the funds to the NCE on her behalf. A letter dated November 22, 2016, from [redacted] Deputy Director of [redacted] indicates [redacted] ostensibly a representative of the company in [redacted] Vietnam, collected 12,475,134,000 VND from the Petitioner on November 22, 2016. [redacted] also claimed [redacted] then remitted the Petitioner's $550,025 investment fund from its [redacted] bank account in [redacted] to the NCE, however the transfer remittance form submitted in the record indicated [redacted] was the owner of the [redacted] account.[5]

The Chief issued a request for evidence (RFE) noting that the Petitioner used a third party currency exchanger but the record contained insufficient evidence showing the lawful source and path of the

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[2] 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).

[3] The Petitioner indicates that the NCE is 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(t)(2).

[4] If a petitioner submits relevant probative, and credible evidence that leads USCIS to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *see also 6 USCIS Policy Manual* G.2(E), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[5] Throughout the record, the Petitioner and [redacted] claim [redacted] is a business registered in [redacted] that does business as [redacted] which is simply an unofficial brand or trade name.

funds invested in the NCE on behalf of the Petitioner. The Chief specifically requested the Petitioner provide evidence of the legitimacy of any third party exchanger as well as documentation to clarify the lawful sources of funds invested by any third party. In response, the Petitioner provided business registration documents for [redacted], a company located in [redacted] Vietnam, which is purportedly affiliated with [redacted] both of which are owned by [redacted] The Petitioner also provided [redacted]'s [redacted] bank transaction history and a letter of certification, signed by [redacted] indicating [redacted] does business as [redacted]

The Chief then issued a notice of intent to deny (NOID) noting that the record was still not sufficient to demonstrate the complete path of the EB-5 investment funds to the NCE or the lawful source of the exchanged funds. More specifically, the Chief determined the Petitioner had not sufficiently documented the path of the VND funds received by [redacted] representative [redacted] that were allegedly deposited into [redacted] accounts in Vietnam or that [redacted] was authorized to do business as [redacted] in Vietnam. The Chief also indicated derogatory information regarding [redacted] was uncovered after USCIS conducted an open source search in Vietnam's online business registration database.[6] A search using [redacted]'s business code located on the provided business registration certificate revealed the code was actually associated with [redacted] which had information inconsistent with the [redacted] certificate such as the name of the company and legal representative as well as the address of the company headquarters. The Chief requested the Petitioner provide independent objective evidence to resolve these inconsistencies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) ("it is incumbent upon the [P]etitioner to resolve the inconsistencies by independent objective evidence").

In her attempt to resolve the above inconsistencies, the Petitioner submitted records provided by [redacted] including her new declaration dated December 7, 2018, which purported to provide clarification regarding the transfer of funds from Vietnam to the United States. [redacted] claimed [redacted] derives its income from the trade, import, and export of tractors and agrimotors and this revenue was the lawful source of the funds [redacted] deposited into the NCE escrow account on the Petitioner's behalf. [redacted] also reiterated [redacted] collected the Petitioner's VND funds on behalf of [redacted] but did not respond to the Chief's request for clarification of the inconsistencies related to [redacted]'s business registration.

After reviewing the record in its entirety, the Chief denied the petition after determining the [redacted] business registration contained false information that revealed inconsistencies in the record that were not resolved. Specifically, the Chief found the Petitioner had not provided any evidence to address the discrepancies between the provided business registration for [redacted] and the open source records revealed using [redacted]'s business registration number. The Chief also determined the Petitioner had not, by a preponderance of the evidence, shown her investment fund derived from lawful sources because the Petitioner had

[6] *See* Vietnamese Ministry of Planning and Investment's Business Registration Database, *available at*: https://dangkykinhdoanh.gov.vn/

not shown the path of the Petitioner's VND funds to a [redacted] bank account or that [redacted] was licensed or otherwise permitted to conduct currency exchanges.

On appeal, the Petitioner argues even if the [redacted] business certificate is false, the document is not relevant to the currency exchange. We disagree. Doubt cast on any aspect of the Petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As noted, the false document was provided by [redacted] the individual whose testimony regarding the transfer of funds plays a key role in establishing the path of the Petitioner's funds. [redacted] did not dispute the Chief's finding that the document contained false information and her statement did not address why the business certificate contained inconsistent information or why the certificate was submitted in response to the Chief's RFE. Providing a false document to the Petitioner, and subsequently failing to refute or explain her actions calls into question the veracity of [redacted]'s other testimony and the validity of other documents she has submitted, particularly as it relates to the manner and methods by which the various companies under her control ostensibly exchanged the Petitioner's funds.

We find the Petitioner has not demonstrated, by a preponderance of the evidence, the path of the funds used in the currency exchange or the lawful source of the funds submitted by [redacted] to the NCE on behalf of the Petitioner. The statements provided by [redacted] claim the Petitioner provided the 12,808,000,000 VND in cash to her representative in Vietnam. In support, the Petitioner has provided her bank account statement showing she withdrew the VND funds and a receipt, signed by [redacted], stating [redacted] received the VND funds on November 22, 2016. However, the Petitioner did not provide any documents such as bank statements to confirm [redacted] actually received the VND funds in its business accounts in Vietnam. Furthermore, the Petitioner did not provide any documents confirming [redacted] was employed by [redacted] or authorized to receive funds on the company's behalf, or explaining what he did with the Petitioner's funds. 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. Here, the Petitioner has not made such a showing.

Next, the record includes inconsistent evidence relating to the companies involved in the currency exchange. First, the Petitioner and [redacted] have stated throughout the record that [redacted] is a company in [redacted] that does business as [redacted] and assists EB-5 investors in Vietnam invest in the NCE by having a representative receive funds in Vietnam and then transfer company obtained USD funds to the NCE on their behalf. However, the Petitioner provided a false [redacted] business certificate which contained a business code that was linked to [redacted] a company allegedly owned by [redacted]'s father. This is inconsistent with [redacted]s statements that [redacted] does business as [redacted] to receive VND funds in Vietnam as part of a currency exchange. Additionally, [redacted]'s own statements call into question what companies were actually involved in the financial transfer since she initially claimed [redacted] had remitted the Petitioner's investment fund to the NCE while the actual remittance form indicates the originating account was owned by [redacted] When the record includes inconsistent evidence, "it is incumbent upon the [P]etitioner to resolve the inconsistencies by independent objective evidence" and that "[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Unresolved

material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

The Petitioner has attempted to resolve these inconsistencies by submitting a legal advisory letter that claims the arrangement between the Petitioner and [redacted] to conduct a foreign currency exchange would be lawful under the laws of Vietnam. However, the submitted legal opinion relied on the documents submitted by [redacted] being credible as well as assumptions that [redacted] acted as a representative of [redacted] when receiving the Petitioners' VND funds in Vietnam without any formal agreement. At issue here are the inconsistencies regarding how [redacted] exchanged the Petitioner's funds and the doubt cast on [redacted]'s evidence due to the unexplained submission of a business document with false information. These assertions from the Petitioner's counsel and counsel in Vietnam do not constitute "competent objective evidence pointing to where the truth, in fact, lies" as they claim, in general, this sort of currency exchange may be lawful in Vietnam but do little to explain or reconcile the inconsistent evidence in the record. *See Ho*, 19 I&N Dc. At 591-92.

Additionally, these unresolved inconsistencies make us question the reliability and sufficiency of the submitted evidence regarding the lawful source of funds [redacted] remitted to the NCE on behalf of the Petitioner. The Petitioner provided [redacted] sales contracts and invoices to demonstrate the company had adequate funds in its bank account to remit the Petitioner's investment funds to the NCE. However, these contracts and invoices were all signed by [redacted] and were submitted in response to the Chief's RFE and NOID along with the false [redacted] business certificate. Due to the unresolved inconsistencies in the record, as well as the fact an unexplained false document was submitted as evidence, we find that the sales invoices and receipts are not reliable and therefore not sufficient to demonstrate the funds remitted from [redacted] to the NCE derived from a lawful source. The [redacted] bank statements that show an account balance with adequate funds are not sufficient to demonstrate the lawful source of these funds. See *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) (Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source.) Here, the Petitioner has not submitted sufficient documentation to demonstrate the currency exchange and related transactions were lawful.

On appeal, the Petitioner argues requesting evidence of the path of the Petitioner's investment funds is a mistake of law because the path of funds is not an independent evidentiary requirement. The Petitioner argues the path of funds analysis is only necessary to document the ownership of the Petitioner's investment capital which is not in dispute because the currency swap transaction "is analogous to an individual borrower obtaining a mortgage loan from a commercial bank." We disagree. In this case, the legality of [redacted]'s role in the foreign currency exchange is in dispute and so does not qualify for any deference that may be afforded to a commercial bank or other organization engaging in currency exchanges in their regular course of business. Moreover, evidence of the path of funds is necessary in this case to establish the lawful source of the funds invested in the NCE. Here, [redacted] has claimed that [redacted] was authorized to receive VND funds in Vietnam and then transfer USD funds from its business account in [redacted] to the NCE as part of a currency exchange agreement. However, the Petitioner did not document the receipt of the VND funds into a [redacted] account bringing into question the lawful source of funds used in the currency

exchange. 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. Here, the Petitioner has not made such a showing.

Next, the Petitioner argues requesting the source of funds from a third party is a mistake of law because it applies an incorrect, heightened standard of proof. First, the Petitioner argues she has submitted sufficient evidence of the lawful source of her own VND funds but the Chief improperly required her to show the lawful source of the funds used in the currency exchange. The Petitioner also argues she is only required to document the lawful source of capital invested into a NCE but not for "other purposes." We disagree with the contention that USCIS has applied an incorrect, heightened standard of proof by requesting evidence from a third party. 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. Additionally, the Petitioner must show that the funds are his own and that they were obtained through lawful means. *See Matter of Soffici*, 22 I&N Dec. 158 at 164-65 n.3 (Assoc. Comm'r 1998). In this case, the Petitioner's ability to show the lawful source and ownership of the funds invested in the NCE relies on [redacted]'s testimony and the evidence she provided to the Petitioner to detail the alleged currency exchange. The Petitioner did not submit any formal agreements to conduct a currency exchange with [redacted] but relies on [redacted]'s statements to claim the currency exchange was conducted in a lawful manner. However, as detailed above, [redacted]'s testimony is not credible due to unresolved inconsistencies as well as the submission of a false business record. The rest of the evidence in the record does not establish the lawful source and path of the Petitioner's investment fund as there is no documentation showing the individual in Vietnam who received the Petitioner's VND funds was a representative of [redacted] or that the individual transferred the funds to [redacted]. Here, the Petitioner is not excepted from the path of funds requirements simply because they entered into an arrangement to move their funds in a manner that makes demonstrating the requirements difficult.

The Petitioner also argues the Chief's denial of her petition violates USCIS deference policy. Counsel claims her law office has received hundreds of "approvals using the currency swap transaction between 2015 to 2017" however USCIS did not request evidence of the lawful source of the funds used in those currency swaps and should therefore defer to these previous adjudications. Additionally, the Petitioner argues that by not deferring to these previous adjudications, USCIS has acted arbitrarily and capricious or otherwise not in accordance with the law. We disagree. The deference policy cited by the Petitioner indicates USCIS will not reexamine determinations made earlier in the EB-5 process, such as previously evaluated and approved aspects of an investment, unless the underlying facts have materially changed, there is evidence of fraud or misrepresentation, or the previously favorable decision is determined to be legally deficient. USCIS Policy Memorandum PM-602-0083, *EB-5 Adjudications Policy* 23 (May 30, 2013), https://www.uscis.gov/legal-resources/policy-memoranda; *see also* 6 *USCIS Policy Manual* G.6, https://www.uscis.gov/policymanual/HTML/PolicyManual.html. Here, the Petitioner does not claim the previous determinations were made earlier in the EB-5 process but rather they were made based on the fact that they also involved a currency exchange. Under *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), we exercise *de novo* review on appeal of all issues of fact, law, policy, and discretion. Moreover, we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*,

825 F.2d 1084, 1090 (6th Cir. 1987). Here, the Petitioner has not shown that the previous determinations are subject to the USCIS deference policy.

Based on the reasons stated above, we conclude that the Petitioner has not documented the lawful source of her 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, she has not demonstrated, by a preponderance of the evidence, the lawful source of the funds remitted to the NCE or that the currency exchange and related transactions were lawful.

III. CONCLUSION

The Petitioner has not documented the lawful source of the capital she remitted to 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.