U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Y-W-

DATE: SEPT. 27, 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 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's invested funds derived from law sources.

On appeal, the Petitioner submits additional documentation and asserts that the Chief mischaracterized evidence, incorrectly finding unresolved inconsistencies. We subsequently issued a notice of intent to deny (NOID) to resolve additional concerns. The Petitioner responded with new exhibits.

Upon *de novo* review, we will sustain 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, which can be any lawful business that engages in for-profit activities. An immigrant investor may invest the required funds directly in an NCE, or invest through a regional center.[1] Regional centers apply for designation as such with U.S. Citizenship and Immigration Services (USCIS). Designated regional centers identify and work with new commercial enterprises, which in turn are associated with a specific project through a 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, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e).

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 funds, a petitioner must submit evidence such as foreign business and tax records or documentation identifying any other source(s) of capital. 8 C.F.R. § 204.6(j)(3). Bank letters or statements confirming 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. *Izummi*, 22 I&N Dec. at 195.[2]

II. ANALYSIS

The Petitioner contributed $500,000[3] in capital to (the NCE). He derived those funds from a house he purchased in 2002 for 604,453 Renminbi (RMB) (approximately $72,942) and sold in 2013 for RMB 3,800,000 (approximately $615,193)[4] after paying off the mortgage in 2005. The record corroborates the path of the sale proceeds to the NCE. At issue is how he earned the money used to purchase the property and pay off the mortgage. The Petitioner presented documentation of his employment and that of his spouse prior to 2005. Specifically, he indicated that he worked for then followed by He maintained that his spouse was an employee at

The Chief concluded, however, that an investigation by a USCIS overseas office contradicted that evidence. On appeal, the Petitioner addresses those findings. In August 2017, we issued a notice of intent to dismiss raising concerns regarding a lack of correlation between the Petitioner's monthly income and taxes and possible inconsistencies relating to his spouse's job title and income. His response has now resolved all concerns. For the reasons discussed below, the Petitioner has credibly verified the remaining income he and his spouse have earned, thus satisfying the requirement that he demonstrate the lawful source of his investment.

A. Employment for

The Chief concluded that the Petitioner's assertion that he has been working for since November 2011 was inconsistent with his 2013 nonimmigrant visa application on which he indicated that his employer was On appeal, the Petitioner explains that is

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[2] 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) (U.S. district court found that a petitioner had not established the lawful source of her funds because she did not designate the nature of all of her employment or submit five years of tax returns).

[3] The minimum investment amount in this matter is $500,000 because the JCE will be primarily doing business in a targeted employment area. 8 C.F.R. § 204.6(f)(2).

[4] U.S. dollar amounts calculated at Currency Converter, https://www.oanda.com/currency/converter/ as of March 13, 2002, (the date of the invoice for the Petitioner's down payment) and June 9, 2013, (the date of the sales contract) (accessed September 14, 2017, and incorporated into the record of proceeding).

trademark brand, which appears prominently on his business card, causing his spouse to list as his employer on his application. He supports this statement with registration of the trademark. Given the documented relationship between and its trademark " the Petitioner has sufficiently resolved this apparent discrepancy.

B. Prior Employment with and Related Companies

Initially, the Petitioner verified his income with a letter from who indicates that he was previously a director of the office of He explains that Japan and established the company in 1993, but that the owners renamed it in 2001 after withdrew as a shareholder. affirms that the company and its successor employed the Petitioner from March 1994 to October 2005, where he earned RMB 470,000 prior to 2002 as a sales assistant in charge of promotions and another RMB 380,000 subsequently as a sales assistant manager.

The Chief concluded that the Petitioner's 2013 nonimmigrant visa application and the results of an overseas investigation raised questions about the accuracy of the Petitioner's documentation. Specifically, the Petitioner indicated on that application that he worked for from May 2003 to July 2012. The overseas investigator acknowledged, however, that in 2011, the Petitioner filed a nonimmigrant visa application reflecting that he worked for a company, with as his supervisor, until 2005.[5] In addition, an overseas investigator contacted a office in The individual at that company confirmed that the Petitioner was there through the middle of December 2005, but, given the length of time, they could not substantiate his position, income, or the employment of The overseas investigation confirmed that the corporate registration documents for listed as the legal representative of the company. Additionally, the Petitioner presents human resource and social security documentation showing employment with through December 2005, demonstrating his personal knowledge of the Petitioner's employment. Notably, while the overseas investigation could not corroborate the Petitioner's level of income during that time, it did not uncover any information suggesting the inaccuracy of data.

On appeal, the Petitioner contends that the ending date discrepancies for the Petitioner's employment with are "miniscule" and easily explained. Specifically, the Petitioner maintains that he stopped working there in October, the paperwork was completed in November, and his paid annual leave ended in December. The Petitioner offers a certificate from affirming that the Petitioner was there through October 2005 and it completed his "formalities for demission" the next month. We agree with the Petitioner that, other than the 2013 nonimmigrant visa application, the differences regarding when he left are not significant. While he does not explain why he listed as his employer as of 2003 on the 2013 nonimmigrant visa application, he has presented ample independent evidence establishing that he worked for

[5] We have reviewed that application and he indicated on it that his employment there was from March 1994 through November 2005.

through late 2005, which is confirmed rather than contradicted by the overseas investigation. Therefore, he has resolved that discrepancy. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, the record contains independent corroboration of attestation about the Petitioner's income. Specifically he provided a list of his monthly wages from 1994 through 2005 prepared by the human resources company utilized by In our NOID, we noted that the salary for 2004 and 2005 did not appear to correlate with his taxes from those years.[6] In response, the Petitioner presents a comprehensive statement from a certified public accountant, who explains in detail how the monthly taxes are calculated based on the prior month's wages and also incorporate numerous other factors. Accordingly, the Petitioner has sufficiently resolved why his taxes do not precisely correlate with his income for the same month.

C.

The Petitioner indicated that his wife's income provided a portion of the money used to purchase the property sold to fund his investment. Initially, he presented a 2013 employment certificate from reflecting that his spouse served in various positions since February 1999, most recently as their operation manager. The document lists her total income to date as RMB 1,155,074. The overseas investigation discovered three companies and contacted the one at the address where the spouse indicated she worked. That entity corroborated the spouse's employment there through December 2015, with her last position being lead administrative assistant. It was unable to specifically confirm her income there.

On appeal, the Petitioner addresses the discrepancy in job title and inability to validate the spouse's income. First, he correctly notes that USCIS contacted long after the company issued the 2013 employment certificate. Accordingly, that they provided a different job title at the time when she left in 2015 does not reduce the credibility of the earlier document. Second, he affirms that maintains the employee wage data and suggests the person who spoke with the USCIS investigator may not have had access to that system. In a new certificate from they substantiate that she left the company in December 2015, holding the position of lead administrative assistant at that time. Another attests that her total income from was RMB 1,217,200. A third certificate from of human resources department confirms that they use the for payroll which served as the basis for the other certificates verifying the spouse's wages. The Petitioner also produced a 2003 letter to his spouse from advising her of a raise in January 2003.

In our NOID, we advised that when the Petitioner's spouse filed nonimmigrant visa applications in 2011, 2013, 2014, and 2015, she listed her position as assistant to the engineering team. We also stated that a computer screenshot appeared to show an income of only RMB 76,324 from July 1999 through November 2004. In response, the Petitioner notes that the visa application requested her duties, not her job title and offers work related email correspondence of her interactions with the

[6] As explained by the Petitioner, 2004 is the first year for which individual tax receipts are available in China.

engineering team, sufficiently resolving our first concern. In addition, the Petitioner explains that the screenshot did not list all of her salary, but her salary adjustments. Even with that clarification, the item has little probative value. The spouse's name and "monthly salary" are handwritten on it. Moreover, the screenshot shows identical amounts for several of the entries, which appears inconsistent with a record solely of salary adjustments. Nevertheless, considering all of the material in the aggregate, the Petitioner has documented that his spouse was employed at [redacted] from 1999 through 2015 and the overseas investigation verified that information. In addition, the Petitioner has submitted multiple attestations from [redacted] regarding her income. The overseas investigation, while unable to confirm the amounts, did not contradict that information. Thus, the Petitioner has demonstrated his spouse's income by a preponderance of the evidence.

III. CONCLUSION

The Petitioner has sufficiently demonstrated the lawful source of his investment.

ORDER: The appeal is sustained.

Cite as *Matter of Y-W-*, ID# 439838 (AAO Sept. 27, 2017)