U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-L-

DATE: MAY 3, 2016

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: FORM I-526, IMMIGRANT PETITION BY ALIEN ENTREPRENEUR

The Petitioner, an individual, seeks classification as an immigrant investor. *See* Immigration and Nationality Act (the Act) § 203(b)(5), 8 U.S.C. § 1153(b)(5). This EB-5 classification makes immigrant visas available to foreign nationals who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.

The Chief, Immigrant Investor Program Office, denied the petition. The Chief concluded that the Petitioner did not show that: (1) he placed or was in the process of placing at least $1 million at risk; or (2) his investment created or would create at least 10 full-time positions for qualifying employees.

The matter is now before us on appeal. In his appeal, the Petitioner submits a brief, stating that the Chief erred in denying his petition and offering additional evidence.

Upon *de novo review*, we will dismiss the appeal.[1]

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 new commercial enterprise. 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. This job creation should generally occur within two years of the foreign national's admission to the United States as a Conditional Permanent Resident. Specifically, section 203(b)(5)(A) of the Act, as amended, provides that a foreign national may seek to enter the United States for the purpose of engaging in a new commercial enterprise:

[1] Subsequent to the instant petition, the Petitioner filed a second petition seeking EB-5 classification based on an unrelated investment. The Chief approved the second petition. This decision will not disturb the Chief's approval.

(i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and

(ii) which will benefit the United States economy and create full time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

II. ANALYSIS

The basis of the petition is an investment of at least $1 million at risk in , doing business as, , the new commercial enterprise (NCE). It is the Petitioner's position that the NCE has spent more than $700,000 of his funds; and the revised Business Plan and employee documents demonstrate that the NCE will create at least 10 full-time positions. The record supports the Chief's findings that the Petitioner has not shown his eligibility for the petition. Specifically, the Petitioner has not confirmed that he invested or is in the process of investing at least $1 million in the NCE; that the NCE will create at least 10 full-time positions for qualifying employees; or that funds deposited into the NCE's accounts came from lawful sources. Accordingly, we will dismiss the appeal.

A. The Petitioner's Capital has Not been Placed at Risk

The regulation at 8 C.F.R. § 204.6(e) defines capital and investment. The regulation at 8 C.F.R. § 204.6(j)(2) explains that a petitioner must have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that a petitioner is actively in the process of investing. A petitioner must actually commit the required amount of capital. The regulation lists the types of documents a petitioner may submit to meet this requirement. In addition, the full amount of the requisite investment must be made available to the business most closely responsible for creating the employment upon which the petition is based. *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998).

According to its Business Plans, the NCE intends to "purchase distressed single-family residential property in the statistical area for the purpose of renovating and reselling for profit to other investors and to owner occupants." In July 2012, the Petitioner deposited two checks totaling $1 million into the NCE's bank accounts ending in and On appeal, he states that the NCE has spent approximately $727,465 of his funds, including $511,432 to purchase five real estate properties in Texas.

The settlement statements show that in 2013, the NCE spent $508,850 to purchase five properties, paying: (1) $180,000, (2) $72,550, (3) $83,550, (4) $82,500, and (5) $90,250 for them. The

Petitioner has not established that the NCE used his funds for these purchases. Unaudited financial statements, entitled "General Ledger," that the Petitioner filed in his request for evidence (RFE) response, reflected the following: (1) the NCE made three deposits into its account ending in [redacted][2] between June 5, 2013, and June 14, 2013, totaling $765,000; (2) the funds came from bank accounts ending in [redacted]; (3) on June 30, 2013, someone withdrew $700,000 from the NCE's account ending in [redacted] and (4) the NCE appeared to have used the withdrawn funds to purchase four of the five properties. The total amount spent on the property purchases and related fees, however, did not add up to $700,000. Moreover, the record lacks bank documents substantiating the $700,000 withdrawal from the [redacted] account or exhibits verifying that the NCE paid the full purchase price out of the Petitioner's funds. Specifically, while the record does contain three cancelled checks on accounts [redacted] and [redacted] for small deposits with the title companies, the Petitioner did not submit any bank record demonstrating that he wired any funds to accounts ending in [redacted] or that the NCE paid the remainder of the purchase price.

Rather, the [redacted] July 2012 statement reflected that on July 16, 2012, the Petitioner deposited $950,000 into the NCE's account ending in [redacted] and $50,000 into the NCE's account ending in [redacted] As of May 31, 2013, a balance of $855,154.26 remained in the [redacted] account. The "General Ledger" showed a "BK Withdrawal" of this amount on June 30, 2013. The Petitioner, however, has not specified where the funds were subsequently deposited or why the funds were withdrawn. He has also not filed any bank documents confirming this withdrawal or evidence verifying that the NCE used any portion of the $855,154.26 from the [redacted] account for its operation, including buying properties.

Page 12 of the updated Business Plan, which the Petitioner submitted in his RFE response, provided that in addition to his $1 million investment, the NCE was to receive an additional $1 million funding through "Bank Debt" and "Equity." While the unaudited July 2013 Balance Sheet reflect no long term liabilities and only $8,770.59 in current liabilities, the Petitioner has not resolved which information is correct. Without bank documents verifying that the NCE used the Petitioner's funds, rather than funds from another source, to purchase the properties, he has not shown that he has placed at least $1 million at risk in the NCE.

On appeal, the Petitioner submits invoices from vendors to substantiate his statement that the NCE has spent a large sum of his funds. Many of these invoices, however, did not list the NCE as the client or as the entity that received the billed services or purchased goods. For example, the invoices from the [redacted] listed [redacted] not the NCE, as their client. A number of vendors also billed individuals [redacted] or business such as [redacted] not the NCE, for the goods and services. As such, these invoices did not demonstrate that the Petitioner's funds have been spent for the NCE's operation, or that the Petitioner has places at least $1 million at risk in the NCE.

[2] The "General Ledger" indicated that the account number was [redacted] It appeared that the last digit of the bank account was missing, because the bank statements reflected that the account number ended in [redacted] not [redacted]

Furthermore, documents the Petitioner has submitted on appeal reflected that a portion of the $1 million he deposited into the NCE's accounts may not have been used for the purposes of generating a return on the capital or job creation. Specifically, an August 2012 invoice from counsel indicated that the NCE paid the legal fees associated with the Petitioner's EB-5 petition. The record includes a number of canceled checks, payable to counsel or his law office, one of which noted that it was for "EB5 BP."

Finally, while the Petitioner maintains on appeal that the record does not contain any evidence of a loan from the NCE to him, according to the unaudited financial statements that he filed in his RFE response, the NCE made a number of loans to its shareholder(s). These amounts have not been placed at risk for the purposes of generating a profit or job creation. In light of the abovementioned reasons, the Petitioner has not established that he has placed at least $1 million of his capital at risk in the NCE pursuant to 8 C.F.R. § 204.6(e).

B. The NCE has Not Met its Job Creation Requirements

The regulation at 8 C.F.R. § 204.6(j)(4)(i) lists the evidence that a petitioner must submit relating to employment creation, including photocopies of relevant tax records, Form I-9s, or other similar documents for 10 qualifying employees, if such employees have already been hired following the establishment of the NCE; or a copy of a comprehensive business plan showing the need for no fewer than 10 qualifying employees. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). A comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *Id.* Elaborating on the contents of an acceptable business plan, *Ho* states that the plan should contain a market analysis, the pertinent processes and suppliers, marketing strategy, organizational structure, personnel's experience, staffing requirements, timetable for hiring, job descriptions, and projections of sales, costs, and income. The decision concludes: "Most importantly, the business plan must be credible." 22 I&N Dec. at 213. In addition, section 203(b)(5)(D) of the Act defines "full-time employment" as "employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position." Section 203(b)(5)(A)(ii) provides that qualifying employees exclude "the immigrant and the immigrant's spouse, sons, or daughters." *See also* 8 C.F.R. § 204.6(e).

On appeal, the Petitioner submits Employee Agreements indicating that the NCE hired him as its President, [redacted] as its Vice President, [redacted] as its Project Manager, [redacted] as its Administrative Assistant, and [redacted] as its Construction Technician. The IRS Form W-2s showed that in 2013, three of these individuals received compensation from the NCE, including the Petitioner. As the evidence does not demonstrate that his funds have already created 10 full-time positions for qualifying employees, which exclude the Petitioner, we examine the NCE's Business Plans to determine whether it will meet the job creation requirements.

The Business Plans do not demonstrate the NCE's need for at least 10 full-time direct employees. According to both the initial and updated Business Plans, the NCE intended to create 10 direct jobs,

including five "Floor Layers, Except Carpet, Wood, and Hard Tiles and Helpers – Painters, Paperhangers, Plasterers, and Stucco Masons," and five "Helpers – Electricians and Helpers – Pipelayers, Plumbers, Pipefitters, and Steamfitters." A staffing chart, which appeared in both Business Plans, indicated that the NCE would employ three "Flooring/Wall Laborers" and three "Plumbing/Electricity Laborers" in year one, and a total of an additional four laborers in year two. Neither Business Plan specified if these individuals will be NCE employees or independent contractors, or if any of them will work at least 35 hours a week.

In addition, the record lacks evidence showing that the NCE has created any of these 10 listed positions. Instead, on appeal, the Petitioner submits documents indicating that the NCE filled positions that were not discussed or explained in either Business Plan. The Business Plan also did not include information pertaining to the licenses and permits required to operate a renovation and resale operation. *See Ho*, 22 I&N Dec. at 213. Accordingly, the Petitioner has not established that either Business Plan accurately reflected the NCE's job creation plan, or that either Business Plan is credible. *See id.*

Furthermore, on appeal, the Petitioner submits invoices and receipts for supplies and equipment needed to renovate houses. He also states that the NCE spent $76,189 on remodeling, which included "Materials + Labor." He, however, has not filed evidence demonstrating the NCE's hiring of the employees listed in the Business Plans to complete the renovation. The lack of such documentation does not support a finding that the NCE has hired or will hire employees to renovate or remodel houses. Rather, this omission indicates that the NCE has used non-employee labor, such as contractors, for the renovation. Page 14 of the updated Business Plan noted that the NCE will use funds for "Contracting Labor," not employee compensation. The record also has a number of service contracts for foundation repair and landscaping, reflecting that the NCE has relied on contractors to completed at least some of its renovation work. In light of the above, the Petitioner has not established that his funds have created or will create at least 10 full-time positions in the NCE for qualifying employees. *See* 8 C.F.R. § 204.6(j)(4)(i)(B).

C. Lawful Source of Funds

Finally, we conclude that the Petitioner has not corroborated the lawful source of his funds. The regulations at 8 C.F.R. § 204.6(j) and (e) provide that a petitioner must show his or her capital is lawfully obtained, and that assets "acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital" under the Act. In addition, a petitioner cannot demonstrate the lawful source of funds by submitting bank letters or statements confirming the deposit of funds. *Ho*, 22 I&N Dec. at 210-11; *Izummi*, 22 I&N Dec. at 195. Without documentation of the complete path of the funds, a petitioner cannot meet his or her burden of establishing that the funds are his or her own funds. *Izummi*, 22 I&N Dec. at 195.

A notary certificate indicated that the Petitioner's father, [redacted] agreed to gift 7 million renminbi (RMB) to the Petitioner in June 2012.[3] The record, however, lacks bank documents confirming the transfer of any funds from the Petitioner's father's account to the Petitioner's account. The June 2012 through July 2012 bank statement showed $999,826 of "Deposits and Additions," and $1,001,094 of "Checks Paid" in the Petitioner's account ending in [redacted] The Petitioner has not filed exhibits, such as bank records, corroborating the source of the $999,826. Accordingly, the Petitioner has not demonstrated the complete path of the funds that the NCE received in July 2012. In light of the above, the Petitioner has not established the lawful source of the funds he deposited into NCE's accounts.

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that he is eligible for the immigrant investor classification. He has not submitted sufficient documentation establishing that he has placed the requisite amount of capital at risk for the purposes of generating a return or job creation, that the NCE meets the employment creation requirements, or that his funds came from lawful sources. The Petitioner, therefore, has not shown his eligibility pursuant to section 203(b)(5) of the Act and the petition may not be approved.

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of C-L-*, ID# 16197 (AAO May 3, 2016)

[3] Online material shows that 7 million RMB was approximately $1,105,500 on June 11, 2012, the date of the notary certificate. *See* http://www.oanda.com/currency/converter/, accessed on March 15, 2016, and incorporated into record of proceedings.